

John Hemington 1784.

THE

Law of Tythes. c‡

DIGESTED ON AN ENTIRE NEW
PRACTICAL PLAN,

For the Use of

The COUNTRY GENTLEMAN,
PARSON, FARMER, or whom else
it may concern.

In which is comprehended,

All the STATUTES, ADJUDGED CASES,
RESOLUTIONS, and JUDGMENTS in
EQUITY, and in the ECCLESIASTICAL
COURTS relating thereto.

PARTICULARLY

The Law, as now established, touching the
AGISTMENT of CATTLE.

o

By JOHN PAUL, Esq; Barrister at Law.

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第三章 『政治の本質』の論述と評議

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THE following sheets are compiled for the particular use and service of the country gentleman, parson, farmer, and all others that are or may become interested in the paying or collecting of the different species of tythes, as by law they are now settled and ascertained.

The Editor has entirely divested the present Treatise of those long, tedious, and declamatory arguments of the *councils* and *civilians* on the nature, class, and distinction of tythes, with which almost all other works on this subject are so uselessly enveloped. Here will be found the essence of *every thing* that has been judicially determined on this head, great part of which has hitherto lain dispersed about

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dispersed and unnoticed in a variety of statutes, equity and ecclesiastical decrees and ordinations.

The tythe law has for ages past been a ground of constant litigation between individuals, sometimes to the total ruin of themselves, their families, and fortunes; and where this has not been the case, it has raised a spirit of dissension that never after could be entirely eradicated.

This work is offered as an humble attempt to remove that evil. It will be found to contain a more comprehensive, yet simple, and explicit definition of the law of tithes than in any book now extant, and in a style and manner suited to those who are not read in the law, as well as those who are.

The article of *Agistment of Cattle* is here fully investigated, and finally determined, from

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from a case in point lately decreed in the Court of *Exchequer*. No person can now possibly err in this branch of the tythe law, who will give themselves the trouble to peruse this pamphlet.

If the intelligence here given is found useful and satisfactory to those who have occasion to consult the subject for practical use, the Editor's wish and design is fully accomplished.

June 1, 1781.

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CON

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THE

THE LAW OF TYTHES.

T H E

Law of Tythes.

Of Parsons and Vicars—What they are—Qualifications necessary for those functions—How and by whom created—What is a temporary, and what a total Incapacity—Appropriations, what they are—Advowsons, what—Their different Kinds, and how they operate—A Rectory or Parsonage explained—Of Vicarages, and their Endowments.

A PARSON, i. e. *personas ecclesiae*, is one that hath full possession of all the rights of a *parochial church*. He is so called, because in his person the church, which is an invisible body, is represented. He has, during his life, the freehold in himself of the *parsonage house, the glebe, the tythes, and other dues*. At the first establishment of *parochial clergy*, tythes were divided into four parts, viz. one for the use of the *Bishop*, another for the maintaining the fabric of the church; a third for the poor, and the fourth to provide for the *incumbent*. Bishops having since been otherwise amply provided for, they are now prohibited from demanding their usual share of tythes. *Vide Co. Litt. p. 300.*

Glebe

The Law of Tythes.

An appropriation, what constitutes the same.

Glebe tythes, &c. are sometimes appropriated, that is, the benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living, whom the law esteems equally capable of providing for the service of the church as any single private clergyman. In order to complete an appropriation, the King's license, and consent of the Bishop must be first obtained, because they at some time or other may have an interest by *lapse* in the presentation to the benefice, which cannot happen if it be appropriated to the use of a corporation, which never dies. The consent of the patron is in this case necessarily implied, because the appropriation can be originally made to none but to such spiritual corporation as is patron of the church, the whole being a license for the patrons to retain the *tythes* and *glebe* in their own hands, without presenting any clerk, they undertaking to provide for the service of the church. An appropriation so created, the appropriators and their successors are perpetual parsons of the church, and must sue, and be sued in all matters concerning the rights of the church, by the name of *parsons*. *Vide Plowd. p. 496. & 500, Hob. p. 307.*

Appropriations may be severed two ways, and the church become *disappropriate*. The first is, if the patron or appropriator presents a clerk who is instituted and inducted to the parsonage; for the person so inducted is to all intents and purposes *complete parson*. Appropriations severed can never be re-united again, unless by a repetition of the same solemnities. The *clerk* so presented is distinct from the *vicar*; the *rectory* thus vested in him becomes what is called a *fine-cure*, because he hath no cure of souls, having a vicar under him, to whom that cure is committed. If the corporation, which has the appropriation, is dissolved, the parsonage becomes *disappropriate* at *common law*, because the perpetuity of person is gone, which is necessary to support the appropriation. *Vide Co. Litt. p. 46. 2. Burn. Eccl. Law. p. 347.*

In this manner, and subject to these conditions, may appropriations be made at this day: and thus were most, if not all, of the appropriations at present existing

Parsons, Vicars, their Qualifications and Benefices.

ing originally made; being annexed to bishopricks, prebends, religious houses, nay, even to nunneries, and certain military orders, all of which were spiritual corporations. At the dissolution of monasteries by *Statutes 27. Hen. 8. c. 28. and 31 Hen. 8. c. 13.* the appropriations of the several parsonages, which belonged to those respective religious houses, (amounting to more than *one-third* of all the parishes in *England*) would have been by the rules of the *common law* disappropriated, had not a clause in those statutes intervened, to give them to the king in as ample a manner as the abbots, &c. formerly held the same at the time of their dissolution. *Vide Seld. Review of Tythes, cap. 9. Spelm. Apology, p. 35.*

Appropriating corporations, or religious houses, used formerly to depute one of their own body to perform divine service, and administer the sacraments in those parishes of which the society was *parson*. This officiating minister was in reality no more than a *curate deputy*, or vicegerent of the appropriator, and called *vicarius*, or *vicar*. His stipend was at the discretion of the appropriator, who was, however, bound of *common right* to find somebody for that service. It being done in so scandalous a manner, and the parishes suffered so much by the neglect of the appropriators, that the *legislature* was forced to interpose. And by *statute 15 Rich. 2. c. 6.* enacted, that in all appropriations of churches, “ the diocesan bishop shall ordain “ (in proportion to the value of the church) a compe- “ tent sum to be distributed among the poor parishi- “ oners annually; and that the vicarage shall be suf- “ ficiently endowed.” It seems the parish were fre- quently sufferers, not only by the want of divine service, but also by withholding those alms for which, among other purposes, the payment of *tythes* was ori- ginally imposed; and therefore, in this act a pension is directed to be distributed among the poor *parochians*, as well as a sufficient stipend to the *vicar*. He being liable to be removed at the pleasure of the appropriator, was not likely to insist too rigidly on the legal sufficiency of the stipend. To remedy which, by *statute 4 Hen. 4. c. 12.* “ It was ordained, that the vicar “ shall be a *secular parson*, not a member of any reli-

The Law of Tythes.

“ gious house; that he shall be vicar perpetual, not removeable at the caprice of the monastery; and that he shall be canonically instituted and inducted, and be sufficiently endowed, at the discretion of the ordinary, for these three express purposes, to do divine service, to inform the people, and to keep hospitality.” The endowments made in consequence of these statutes have usually been by a portion of the glebe, or land, belonging to the parsonage, and a particular share of the *tythes*, which the appropriators found it most troublesome to collect, and which are therefore generally called *privy* or *small tythes*; the *greater*, or *predial tythes*, being still reserved to their own use. This rule was not observed in the endowment of all vicarages. Some are more liberally, and some more scantily, endowed; the *tythes* of many things, as *wood in particular*, are in some parishes *rectorial*, and in some *vicarial tythes*. *Vide Seld. Tythes, cap. II. I.*

Distinction between a parson and vicar.

The distinction of a *parson* and *vicar* is: The *parson* has, for the most part, the whole right to all the ecclesiastical dues in his parish: A *vicar* has generally an appropriator over him, who is entitled to the best part of the profits, to whom he is, in effect, no more than *perpetual curate*, with a standing salary. In some places the *vicarages* have been considerably augmented by a large share of the *great tythes*; which augmentations were greatly aided by *statute 29 Car. 2. c. 8.* enacted in favour of *poor vicars* and *curates*, which rendered such temporary augmentations (when made by the appropriators) *perpetual*.

To constitute a *parson* or *vicar*, there are *four* requisites necessary, viz. *holy orders*, *presentation*, *institution*, and *induction*. By the *common law*, a *deacon*, of any age, might be instituted and inducted to a *parsonage* or *vicarage*. By *statute 13 Eliz. c. 12.* it was enacted, “ that no person under *twenty three* years of age, and in *deacon's orders*, should be presented to any *benefice with cure*; and if he were not ordained *priest* within *one year* after his induction, he should be *ipso facto deprived*.” By *statute 13 and 14 Car. 2. c. 4.* “ no person is capable to be admitted to any *benefice unless he hath been first ordained a priest* ;” “ and

and then he is, in the language of the law, a clerk in orders. If he obtains orders, or a license to preach, by money or corrupt practices, the person giving such orders forfeits forty pounds; and the person receiving ten pounds, and is incapable of any ecclesiastical preferment for seven years afterwards. *Vide Burn. Eccl. Law*, vol. 2. p. 103.

A clerk may be presented to a parsonage or vicarage; A clerk, how that is, the patron, to whom the advowson of the presented church belongs, may offer his clerk to the bishop of the diocese to be instituted. When a clerk is presented, the bishop may refuse him on many accounts, *First*; if the patron is excommunicated, and remains in contempt forty days. *Secondly*; if the clerk be unfit; which unfitness is of several kinds. *First*, with regard to his person; as if he be a bastard, an outlaw, an excommunicate, an alien under age, or the like. Next with regard to his faith or morals, as for any particular heresy, or vice that is malum in se: but if the bishop alleges only in generals, as that he is schismaticus inveteratus, or objects a fault that is malum prohibitum merely, as haunting taverns, playing at unlawful games, or the like, it is not good cause of refusal. *Lastly*; the clerk may be unfit to discharge the pastoral office for want of learning. In any of which cases the bishop may refuse the clerk. In case the refusal is for heresy, schism, inability of learning, or other matter of ecclesiastical cognizance, there the bishop must give notice to the patron of such his cause of refusal, who, being usually a layman, is not supposed to have knowledge of it, else he cannot present by lapse: but if the cause be temporal, there he is not bound to give notice. *Vide Burn*, vol. 1. p. 103. 2 *Roll. Abr.* p. 355. *Glanv. lib. 13. cap. 20.* 2 *Roll. Abr.* p. 356. 2 *Inst. p. 632.* *Stat. 3 Rich. 2. cap. 3.* 7 *Rich. 2. cap. 12.* 5 *Rep. 58.* 2 *Inst. 632.*

If an action at law be brought by the patron against the bishop for refusing his clerk, the bishop must assign the cause. If the cause be of a temporal nature, and the fact admitted, (as, for instance, outlawry) the judges of the King's courts must determine its validity, or whether it be sufficient cause of refusal: but if the

fact be denied, it must be determined by a *jury*. If the cause be of a *spiritual* nature, (as heresy, particularly alleged) the fact, if denied, shall also be determined by a *jury*; and if the fact be admitted or found, the court, upon consultation, and advice of learned divines, shall decide its sufficiency. If the cause be want of learning, the Bishop need not specify in what points the clerk is deficient, but only allege that he is deficient; for *stat. 9 Edw. 2. s. 1. c. 13.* is express, that the examination of the fitness of a person presented to a benefice belongs to the *ecclesiastical* judge; but because it would be nugatory in this case to demand the reason of refusal from the ordinary, if the patron were bound to abide by his determination, who has already pronounced his clerk unfit; therefore, if the Bishop returns his clerk to be *minus sufficiens in literatura*, the court shall write to the *metropolitan* to re-examine him, and certify his qualifications; which certificate of the *Archbishop* is final. *Vide 2 Inst. p. 632, 5 Rep. 58. 3 Lev, 313.*

On institution, the clerk may enter on the *parsonage house* and *glebe*, and take the *tythes*, but he cannot grant or let them, or bring an action for them till induction. *Vide Black. Com. vol. 1. p. 200.*

The different kind of adyowsons.

An *adyowson* is the right of presentation to a church or *ecclesiastical* benefice. There are three kinds of *adyowsons*, viz. *presentative*, *collative*, or *donative*; when *presentative*, the patron hath a right of presentation of a clerk to the Bishop or ordinary, if *canonically* qualified; *collative* is where the Bishop and patron are one and the same person; *donative* is when the King or any subject by his license doth found a church or *chapel*, and ordains that it shall be merely in the gift or disposal of the patron, subject to his visitation only, and not to that of the ordinary, and vested absolutely in the clerk by the patron's deed of donation, without presentation, institution, or induction. These *adyowsons* have all *tythes* annexed to them, and are usually paid to the officiating ministers, which before were given to the clergy in common. *Vide Co. Litt. p. 119, Ibid. 121. Ibid. 307. Ibid. 320.*

A *rectory*

A rectory or parsonage is a spiritual living, composed of land, tythes, and other oblations of the people, separate or dedicate to God in any congregation for the service of his church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed. *Vide Spel. head De non temerandis Ecclesiis, p. 1. Degge's Parson's Counsellor, cap. 13.* page 190.

A rectory or parsonage usually consists of glebe land and tythes, with the offerings, yet it may be a rectory, though it have no glebe but the church and church-yard: and in London, and other great towns and cities, there may neither be glebe nor tythes, but annual payments and offerings in lieu thereof. *Ibid.*

By grant of rectory, all the glebe tythes and offerings pass. *Ibid.*

A vicarage is a cantel or portion of the rectory, set out by the patron, parson, and ordinary, for the maintenance of a perpetual vicar, who, as vicegerent of the parson, hath the cure of the souls within the parish where he is vicar. A vicarage may consist of land or tythes alone, or of glebe tythe, offerings, or in an annual pension, without glebe or tythes; and such pensions have been limited by several canons. *Vide Degge's Par. Couns. p. 191.*

Vicarages are in general indowed with glebe and tythes. *Ibid.*

Indowments of vicarages are always construed in law favourably to the vicar, especially where the cure of souls is annexed. *Ibid. p. 194.*

C H A P. II.

Tythes, what they are—Their general operation and names.—How divided—What will alter the customary and usual division of Tythes—To whom extraparochial Tythes belong—To whom Tythes are due in particular cases.

Tythes, what they are.

TYTHES, by the best law, and ecclesiastical authorities, are *defined* to be the tenth part of the increase yearly arising, and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, payable towards the maintenance of a parish priest, by every person who hath any thing tytheable in the parish, unless he can shew some *special* exemption therefrom, as will be shewn hereafter. They are properly due to such clergy that have the cure of souls in the parish where they arise. *Vide Black. Com. vol. 2. p. 24. Wood's Inst. p. 161. 2 Rep. 411. 4 Rep. 33, 14. Degge Parsons Coun. p. 214.*

Tow classed.

Tythes are usually classed under three heads, viz. *predial, mixed, and personal.*

Predial tythes.

Predial tythes are such as arise merely and immediately from the ground; as, for example, *grain of all sorts, hay, wood, fruits, herbs.* *Vide Black. Com. vol. 2, p. 24.*

Mixed tythes.

Mixed tythes arise not immediately from the ground, but from things immediately nourished by the ground, as by means of goods depastured thereupon, or otherwise nourished with the fruits thereof, as *all sheep, all beasts, and horses, heifers, steers, colts, fillies, chickens, milk, cheese, eggs.* The depasturing cattle of all sorts is called the *tythe of agistment*, that is, the tenth part of the value of the keeping or depasturing such cattle. *Ibid.*

Note. It has been lately determined in the Exchequer, that agistment tythes are due so often as there is an increase of profit from the land. Ibid. and Case in Exchequer, Easter Term, 1774. Bateman v. Aistrup, &c.

Personal

Personal tythes are such profits as do arise by the honest labour and industry of man, employing himself in some personal work, artifice, or negotiation, being the tenth part of the clear gain, after charges and expences, according to a person's estate, condition, or degree, are deducted. *Ibid.*

By stat. 2 and 3 Edw. 6. cap. 13. sect. 7. IT IS ENACTED, That every person exercising merchandizes, bargaining and selling, cloathing, handicraft, or any other art or faculty, being such persons, and in such places as within these forty years have used to pay personal tythes, or of right ought to pay, other than such as the common day-labourers, shall yearly, at or before Easter, pay for his personal tythes, the tenth part of his clear gains; his charges and expences, according to his estate or degree, to be deducted.

Sect. 8. In all such places where handicraftsmen have used to pay their tythes within these forty years, the same custom shall continue. *Ibid.*

Sect. 9. If any person refuse to pay his personal tythes, it shall be lawful to the ordinary of the diocese where the party is dwelling, to call the party before him, and examine him, by all lawful means, other than by the party's oath, concerning the payment of the personal tythes. *Ibid.*

Tythes, with regard to value, are divided into *great* and *small*: *great tythes*, as *corn*, *hay*, and *wood*. *Vide Degge Past. 2. cap. 1.*

Small tythes, as the *predial* tythes of other kinds, together with those which are called *mixt* and *personal*. *Vide Gibs. Cod. 663.*

This manner of dividing tythes may be altered by custom, which will make *wood* a *small tythe*, under the general words of *minutæ decimæ*, in the endowment of the vicar. *Vide 4 Mod. p. 184.*

The law seems now settled, that tythes are to be denominated *great* or *small* tythes, according to the nature

nature and quality thereof, and not according to the quantity. *Anon.*

Extraparochial tythes.

Tythes extraparochial, or within the compass of no certain parish, belong to the crown. By the *canon law* they were to be disposed of at the discretion of the Bishop; but by the law of *England*, all extraparochial tythes, as in several forests, do belong to the King, and may be granted to whom he will; he being deemed a mixed person, and capable of tythes at *common law* in *permanency*, and in consequence they have been adjudged to him, not only by several resolutions of law, but also in parliament. *Vide Seld. History Decim. p. 365. 10 Hen. 7. cap. 18. Co. 5. part 128.*

By stat. 2 *Edw. 6. cap. 13. sect. 3. IT IS ENACTED,*
 " That every person which shall have any beasts or
 " cattle tytheable, depasturing on any waste or common
 " ground, whereof the parish is not certainly known,
 " shall pay their tythes for the increase of the said
 " cattle to the parson, owner, or their farmers, of the
 " parish or place where the owner of the said cattle
 " inhabiteth."

S E C T. 4. " No person shall be sued or compelled
 " to pay tythes for any lands, which by the laws of
 " this realm, or by any privilege or presumption,
 " are not chargeable with such tythes, or that be dis-
 " charged by any composition real."

To whom tythes are due in particular cases.

If a parson lease his *glebe lands*, and in such lease doth not also grant the tythes thereof, the tenant shall pay the parson tythes. *Vide Degge Par. Coun. p. 226.*

The same law holds, if an *impropriator vicar*, &c. make leases. *Vide Hetly, p. 31.*

The parson shall have tythe of his own tenant, so he shall have of his *feoffee*. If he hath lands in the same parish whereof he is parson, and demises his tythes, he shall pay tythes to his lessee. *Vide Co. 1—III. a. Cro. El. 261.*

Of Tythes, their Names and Operation.

If a parson sow his ground, and then sell the emblents, i. e. the corn growing on the ground; the buyer of the corn shall pay the tythe of it to the parson that sowed and sold the corn. *Vide Dyer, 43. p. 21.*

By Stat. 28. Hen. 8. cap. II. all tythes and other profits belonging to a rectory are given to the successor from the death of the late incumbent.

Note. Notwithstanding the foregoing statute, the law seems clear, that the executor of the parson shall have the corn sown by his testator in his life-time as the executors of other tenants for life have by the law. *Vide Rolls, 655. K. 3.*

It is settled on Stat. 28. Hen. 8. That if the parson, vicar, &c. sow the land, and be deprived, resign, or accept another living, the successor shall have the tythe.

It hath been held, that the vicar, upon a general indowment, shall not pay tythe for his glebe to the parson on the fruits arising therefrom, without special words in such indowment. *Vide More, p. 910. and 457.*

If a vicar be endowed of all the *small tythes* arising within the parish, yet he shall not have the small tythes arising upon the glebe lands of the parson. *Vide Winch. p. 70.*

Tythes by prescription may be appendant on an ancient chapel. *Vide More, p. 457—910.*

By the canon law, personal tythes are to be paid where the party communicates, but predial to the parson within whose parish the land lies. *Vide Decret. Greg. de decim. cum sunt Gloss.*

Note. In general, tythes are to be paid for every thing that yields an annual increase, as *corn, hay, fruit, cattle, poultry*, and the like, but not for any thing that is of the substance of the earth, or is not of annual increase, as *stone, lime, chalk*, and the like, nor for creatures that

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that are of a *wild nature*, or *feræ naturæ*, as *deer*, *hawks*, &c. whose increase, so as to profit the owner, is not *annual*, but *casual*. *Vide Black. Com. vol. 2. p. 24.*

The foregoing rule admits of some exception: for example, tythe is due of *saffron*, though gathered but once in *three years*; so of *sylva cædua*, or wood of *twenty years growth*. *Vide Gibs. p. 669.*

By the *canon law*, if seeds be sown on the same ground, and renew oftener than once in the year, the tythes thereof shall be paid so often as they do renew. The *common law* holds, that *de jure* tythes are due of the *aftermath*, if not exempted by *prescription*: And by a late determination in the *Exchequer*, all tytheable matters are subject to tythe as often as they yield a profit to the owner in the year. *Vide Gibs. p. 633. 1 Roll. Abr. p. 640. Case in Exchequer, Bateman v. Aistrup.*

Things deemed *feræ naturæ*.

By the *common law*, fish taken out of the sea, or out of a river, are not subject to tythe, unless by *custom*, as in *Wales*, *Ireland*, *Yarmouth*, and other places; nor of *conies*, or the like; but if the tythe thereof be due by *custom*, it must be paid. *Vide Gibs. Cod. p. 669. Degge, p. 2. c. 8. 2 Inst. p. 651.*

Quarries.

Of *common right*, no tythes are to be paid of *quarries* of *stone* or *slate*, for that they are parcel of the *freehold*; and the parson hath tythes of the *grass* or *corn* which grew upon the surface of the land in which the quarry is; so also, not for *coal*, *turf*, *flag*, *tin*, *lead*, *brick*, *tile*, *earthen pots*, *lime*, *marle*, and such like, because they are not the increase, but of the substance of the earth, and the like. *Vide 2 Inst. p. 651. Gibs. Cod. p. 669. Mod. Rep. p. 908. Cro. Eliz. p. 277.*

Foreft lands.

Lands which are *extraparochial* pay tythes to the King; so lands lying within the precincts of a *forest*, (though also in a *parish*) if they be in the hands of the King, do pay no tythes; and this privilege extends to the King's *lessee*, but not to his *feoffee*. If the forest be *disafforested*, and be within any *parish*, then they ought

Of Tythes, their Names and Operation.

13

ought to pay tythes into the hands of the King's lessee. *Vide Bob. p. 163. 177. Gibs. Cod. 680.*

It seems doubted, where a park hath paid a ~~modus~~ Parks, ~~modus~~, and is disparked, whether the ~~modus~~ shall continue or be discharged, and tythes paid in kind; all the authorities seem clear, that if the ~~modus~~ was a certain consideration in money for all the tythes of such a park, such ~~modus~~ shall continue, notwithstanding it be disparked. If the ~~modus~~ was for the deer and herbage of such a park, the ~~modus~~ is lost on the same being disparked, because there being no park, there can be no deer kept there. *Vide Gibs. Cod. p. 684. Wats. cap. 47.*

If the ~~modus~~ had been to pay a buck and a doe in lieu of the tythes of such a park, and the park is disparked, the ~~modus~~ shall continue, and the owner may give a buck and a doe out of another park; but if it was to pay the shoulder of every deer, or particularly a buck or a doe out of the same park, the ~~modus~~ is lost. *Ibid.*

Where the ~~modus~~ was, part in money, and part in venison, out of the park, (namely, two shillings, and the shoulder of every deer) on special argument, the court was divided, two being of opinion that the two shillings continued, and that the spiritual court should assign an equitable recompence for the shoulders, according to the number that had been usually paid; and the other two, that the money and venison, making one entire ~~modus~~, the one being gone, the whole was dissolved. *Ibid.*

It has been determined, that the King is not, by virtue of his prerogative, discharged of tythes for ~~ancient~~ ^{Ancient de-} mesne, demesnes of the crown, but that as *persona mixta*, i. e. a mixed person, he is capable of a discharge *de non decimando*, by *prescription*, as well as a *Bishop*. If the King alien. any of the lands for which he is so discharged of tythes, his *patentee* shall pay tythes; and the *prescription* is thereby destroyed for ever, although the same lands should afterwards come into the King's hands again by *escheat* or otherwise. *Vide Hard. p. 315. Mich. 14. Car. 2.*

By

Barren land.

By statute of 2 and 3 Ed. 6. c. 13. sect. 5. " All such barren heath or waste ground, other than such as be discharged from the payment of tythes by statute, which before the passing this law have lain barren, and paid no tythes, by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall, after the end and term of *seven years* next after such improvement is fully ended and determined, pay tythe for the *corn and hay* growing upon the same."

Sect. 6. PROVIDED, " That if any such barren, waste, or heath ground hath before that time been charged with the payment of any tythes, and the same be hereafter improved or converted into arable ground or meadow; the owner thereof shall, during the *seven years* next after the said improvement, pay such kind of tythe as was paid for the same before the said improvement."

Sect. 5. After seven years. " Here are no express words of discharge of the tythes during the *seven years*, though by the reasonable construction it is implied, and amounts to a discharge during the *seven years* which are to be accounted to commence immediately next after the improvement."

Barren. If it doth yield some fruit, and do pay tythes for *wool and lamb*, or the like, yet if it be barren land, as to agriculture or tillage, which this clause evidently meant to advance, it is within the act.

If the ground be not suited for tillage, yet if it be not in its own nature barren, it is not within the meaning of the statute. For example, if a wood be stubbed and grubbed, and made fit for the plough, and employed thereunto, yet it shall pay tithes presently; for woody ground is in its nature fertile, and not barren. *Vide 2 Inst. p. 656. Bunt. p. 159.*

Land only is considered as barren land that before the ploughing produced no profit to the owner. *Vide From. Reports, 335. pl. 416. Mich. 1698. in Scacc. Anon. Bendl.*

Of Tythes, their Names and Operation.

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Bendl. 8. pl. 122. 2 Eliz. S. P. and so held at common law.

Waste ground is such ground as no man claims for waste ground, his own, or no man can tell to whom it certainly belongs, and lies uninclosed and unbounded with hedge or ditch; but ground that lies inclosed, and hedged and ditched in, so that the land is known, cannot be deemed waste ground. *Vide Bendl. 80. pl. 122. 2 Eliz.*

Anon. S. C. cited D. 170. b. Marg. pl. 5.

Heath ground is such ground as is dispersed, and lies Heath ground in common. *Ibid.*

Where land be full of thorns and bushes, from time whereof, &c. and it is grubbed up and made meadow or arable land, tythes shall be presently paid thereof, notwithstanding stat. 2 and 3 Ed. 6. c. 13. for those lands were not naturally barren, but became so by negligence or ill husbandry, and the statute extended only to barren land made good by industry. *Vide Cro. Eliz. 475. pl. 3.*

Fenny land, afterwards drained, is not exempted by Fenny land the act.

Land which bears broom is not within statute 2 Edw. 6. for it is not barren land, and therefore if converted into arable, shall be chargeable with tythe. *Vide Roll. Rep. p. 39.*

If a man, at a great expence, gains land from the sea, which before was marshy and sandy land, and covered with salt-water, and afterwards converts it into arable land, he shall pay tythes presently, because this land is not barren of its own nature, but only by accident, by reason of the sand and salt-water overflowing it. *Vide Blust. vol. 3. p. 156.*

If sheep are kept on barren land, whereby it yields any profit to the owner, this makes it tytheable, and such tythe ought to be paid within the seven years. *Vide Lit. Rep. p. 311.*

Barren

Barren lands to be exempted from tythes within the true meaning of stat. 2 Edw. 6. must be such land as is barren, *suapte natura*, and on suggestion for a prohibition to a suit for tythes of such land, it must be alleged to be barren, *suapte natura*. *Vide 2 Raym. p. 991.*

As to a *modus* or *customary payment* in lieu of tythes, it appears, that where *commons* are *divided*, *inclosed*, and *improved*, the *modus* can refer only to such tythes as the *common* yielded before its *improvement* and *division* into *severalties*; as of the *agistment* of *cattle*, *wool*, and *lamb*, or such like; and not to the tythes of *corn*, *hay*, or other tythes accruing *de novo*, after the improvement. Where there is a *modus* in lieu of all the tythes of such an estate, it appears that such *modus* shall cover the *common appurtenant* to such estate, when *divided* into *severalties* and *inclosed*. *Vide B. Eccl. Law, p. 388.*

Note. In stat. 2 and 3 Edw. 6. c. 13. sect. 6. there are no express words of discharge of the tythes during the seven years, yet, by reasonable construction, it amounts to a discharge during the seven years; and the seven years are to be accounted next after the improvement. *Vide 2 Inst. p. 656.*

On a trial at law, whether lands are *barren* or not, within the meaning of the statute, must be had in the *temporal*, and not in the *spiritual* court; for in a suit for tythes in the *spiritual* court, if the defendant pleads that it is *barren land*, and that plea be refused, or issue taken upon it, there a prohibition shall be granted; but a prohibition shall not be granted upon a suggestion only that it is *barren land*, before it be pleaded in the *spiritual* court. *Vide Degge, p. 2. C. 19. 1 Keb, p. 253.*

Glebe land.

Glebe is a portion of land, meadow, or pasture, belonging to, or parcel of, the *parsonage* or *vicarage*, over and above the tythes. *Vide Godol. Rep. p. 409.*

If a parson sow his glebe, and dieth before the severance, and afterwards his successor is inducted, and his

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his executor or vendee severeth the corn, the successor shall have the tythe thereof; for although the executor represent the person of the testator, yet he cannot represent him as a parson, inasmuch as another is inducted. *Vide Degge, p. 2. c. 2. I Roll Abr. p. 655.*

If the parson dieth after severance from the ground, and before the corn is carried off, in this case the successor shall have no tythe, because, though it was not set out, yet a right to it was vested in the deceased parson by the severance from the ground. The same doctrine holds in case of *deprivation* or *resignation* after glebe sown: the successor shall have the tythe, if the corn was not severed at the time of his coming in, but not if severed. *Vide Gibs. p. 662.*

By the stat. 31 H. 8. c. 13. sect. 21. IT IS ENACTED as followeth, viz. "Where divers abbots, priors, and other ecclesiastical governors of the monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places dissolved by this act, have had divers parsonages appropriated, tythes, pensions, and proportions, and also were acquitted and discharged of the payment of tythes for their monasteries, or other religious and ecclesiastical houses and places as aforesaid, manors, messuages, lands, tenements, and hereditaments, it is enacted, That as well the King, our Sovereign Lord, his heirs and successors, as all other persons, their heirs and assigns, who shall have any of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, or other ecclesiastical houses or places, sites, circuits, precincts of the same, or any of them, or any manors, messuages, parsonages, appropriate, tythes, pensions, portions, or other hereditaments, which belonged to any such religious house, shall hold and enjoy, as well the said parsonages, appropriate, tythes, pensions, and portions of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friars, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, messuages, lands, tenements, and other hereditaments, according to their estates

C

" and

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“ and titles, discharged and acquitted of payment of
“ tythes, as freely, and in as large and ample manner
“ as the said late abbots, priors, and other ecclesiasti-
“ cal governors, held and enjoyed the same.”

*Note. For a table of monasteries dissolved by the above
statute, see end of the Book.*

C H A P.

C H A P. III.

Of exemption from payment of tythes by modus, custom, and prescription, &c.

THREE are various ways whereby abbey-lands are holden discharged of tythes, as *composition*, ^{The various} *means of exemption.* *bull or canon, order, prescription of discharge, and unity of possession of parsonage and land, time out of mind, &c.*

FIRST, a *real composition* is when an agreement is made between the owner of the lands and the parson or vicar, with the consent of the ordinary and the patron, that such lands shall for the future be discharged from payment of tythes, by reason of some land or other, real recompense given to the parson, in lieu and satisfaction thereof. This was countenanced by law, supposing that the clergy would be no losers by such composition; since the consent of the ordinary, whose duty it is to take care of the church in general, and of the patron, whose interest it is to protect that particular church, were both made necessary to render the composition effectual; and hence arose all such compositions as exist at this day by force of the *common law*. But experience shewing that even this caution was ineffectual, and the possessions of the church being by this and other means every day diminished, the disabling *statute 13 Eliz. c. 10.* was made, which prevents, among other spiritual persons, all parsons and vicars from making any conveyances of the estates of their churches, other than for *three lives* or *twenty-one years*. So that now, by virtue of this statute, no *real composition* made since the *13 Eliz.* is good for any longer term than *three lives*, or *twenty-one years*, though made by consent of the patron and ordinary; which has indeed effectually demolished this kind of traffic; such compositions being now rarely heard of, unless

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by authority of parliament. *Vide Blackston, vol. 2.*
p. 28.

Custom or prescription.

SECONDLY, a discharge by *custom* or *prescription*, is where time out of mind such persons or such lands have been, either partially or totally, discharged from the payment of tythes. And this immemorial usage is binding upon all parties, as it is in its nature and evidence of universal consent and acquiescence, and with reason supposes a real composition to have been formerly made. This *custom* or *prescription* is either *de modo decimandi*, or *de non decimando*. *Ibid. 29.*

A modus.

A modus decimandi, commonly called by the simple name of a *modus* only, is where there is by *custom* a particular manner of tything allowed, different from the general law of taking tythes in kind, which are the actual *tenth* part of the annual increase. This is sometimes a pecuniary compensation, as *two-pence* an acre for the tythe of land: sometimes it is a compensation in work and labour, as that the parson shall have only the *twelfth* cock of hay, and not the *tenth*, in consideration of the owner's making it for him: sometimes in lieu of a large quantity of crude or imperfect tythe, the parson shall have a less quantity, when arrived to greater maturity, as a couple of fowls in lieu of tythe eggs; and the like. Any means, in short, whereby the general law of tything is altered, and a new method of taking them is introduced, is called a *modus decimandi*, or special manner of tything.

What makes a good modus.

To make a good and sufficient *modus*, the following rules must be observed; *First*, It must be certain and invariable, for payment of different sums will prove it to be no *modus*, that is, no original *real composition*, because that must have been one and the same, from its first original to the present time; *Secondly*, The thing given, in lieu of tythes, must be beneficial to the parson, and not for the emolument of third persons only; thus, a *modus* to repair the church in lieu of tythes is not good, because that is an advantage to the parish only; but to repair the chancel is a good *modus*, for that is an advantage to the parson; *Thirdly*, It must be something different from the thing compounded for; *one*

one load of hay, in lieu of all tythe hay, is no good *modus*: for no parson would *bona fide* make a composition to receive less than his due in the same species of tythe; and therefore the law will not suppose it possible for such composition to have existed. *Fourthly*, One cannot be discharged from payment of one species of tythe, by paying a *modus* for another. Thus, a *modus* of one penny for every milch-cow will discharge the *tythe of milch kine*, but not of *barren cattle*: for tythe is, of *common right*, due for both; and therefore a *modus* for one shall never be a discharge for the other; *Fifthly*, The recompence must be in its nature as durable as the tythes discharged by it; that is, an inheritance certain; and therefore a *modus* that every inhabitant of a house shall pay *four pence* a year, in lieu of the owner's tythes, is no good *modus*; for possibly the house may not be inhabited, and then the recompence will be lost. *Sixthly*, The *modus* must not be too large, which in law is called a *rank modus*: as if the real value of the tythes be *sixty pounds per annum*, and a *modus* is suggested of *forty pounds*; this *modus* will not be good, though one of *forty shillings* might have been valid. For, in these cases of *prescriptive* or *customary moduses*, the law supposes an original *real composition* to have been regularly made; which being lost by length of time immemorial, usage is admitted as evidence to shew that it once did exist, and that from thence such usage was derived. Now, time of memory hath been long ago ascertained by the law to commence from the reign of *Richard the First*; any custom may be destroyed by evidence of its *non-existence* in any part of the long period from his days to the present; wherefore, as this real composition is supposed to have been an equitable contract, or the full value of the tythes at the time of making it, if the *modus* set up is so rank and large, as that it beyond dispute exceeds the value of the tythes in the time of *Richard the First*, this *modus* is *felo de se*, and destroys itself. For, as it would be destroyed by any direct evidence to prove its *non-existence* at any time since that *era*, so also it is destroyed by carrying in itself this internal evidence of a much later original.

Vide 1 Keb. p. 602. 1 Ral. Abr. p. 649. Lev. p. 179. Cro. Eliz. p. 446. Salk. p. 657. 2 Peer Williams, 462. 11 Mod. 60.

A prescription
for not paying
tythes.

A *prescription de non decimando* is a claim to be entirely discharged of tythes, and to pay no compensation in lieu of them. Thus, the King by his prerogative is discharged from all tythes. So a vicar shall pay no tythes to the rector, nor the rector to the vicar, for *ecclesia decimas non solvit ecclesiae*. These personal privileges (not arising from, or being annexed to, the land) are personally confined to both the King and the clergy; for their tenant or lessee shall pay tythes, though in their own occupation their lands are not generally tytheable. It is an established rule, that in lay hands, *modus de non decimando non valet*. *Spiritual* persons or corporations, as monasteries, abbots, bishops, and the like, were always capable of having their lands totally discharged of tythes, by various ways; *First*, by *real composition*; *Secondly*, by the *Pope's bull of exemption*; *Thirdly*, by *unity of possession*; as when the rectory of a parish, and lands in the same parish, both belonged to a religious house, those lands were discharged of tythes by this unity of possession; *Fourthly*, by *prescription*; having never been liable to tythes, by being always in *spiritual* hands; *Fifthly*, by *virtue of their order*, as the *knights templars*, *cistercians*, and others, whose lands were privileged by the Pope with a discharge of tythes. On the dissolution of abbeys by *Henry VIII.* most of these exemptions from tythes would have fallen with them, and the lands become tytheable again, had they not been supported and upheld by *statute 31 Hen. 8. c. 13.* which enacts, "That all persons who should come to the possession of the lands of any abbey then dissolved, should hold them free and discharged of tythes, in as large and ample a manner as the abbeys themselves formerly held them." And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tythe free: for if a man can shew his lands to have been such abbey-lands, and also immemorially discharged of tythes by any of the means before mentioned, this is now a good *prescription de non decimando*. But he must shew both the requisites: for abbey-lands, without a special ground of discharge, are not discharged of course; neither will any *prescription de non decimando* avail in total discharge of tythes, unless

less it relates to such abbey-lands. *Vide Cro. Eliz.* 479.
511. *Hob.* 309. *Cro. Jac.* p. 308.

It must be observed, that there is a difference between *custom* and *prescription*; *custom* is that which gives right to a *province, county, hundred, city, or town*, and is common to all within the respective limits. *Vide Gibs.* p. 673.

Prescription gives a right to some particular *house, farm, or other thing.* *Ibid.*

Custom and *prescription* are either *de non decimando*, or *de modo decimandi*. *De non decimando* is to be free from the payment of tythes, without any recompence for the same. Concerning which, the general rule is, that no layman can prescribe in *non decimando*, that is, to be discharged absolutely of the payment of tythes, and to pay nothing in lieu thereof, unless he begin his prescription in a religious or *ecclesiastical* person, and derive a title to it by act of parliament. But all *spiritual* and religious persons, as *bishops, deans, prebends, parsons, vicars*, (as heretofore abbots and priors) may prescribe generally in *non decimando*, for they are more favoured than lay persons; for this is still in a *spiritual* person, and so nothing is taken from the church; for such *spiritual* person was capable of a grant of tythes at the *common law* in permanancy. Hence it is, that the parson or vicar of one parish, that hath part of his glebe lying in another parish, may prescribe in *non decimando* for it, that is, to be free from the payment of any manner of tythe for the same. *Vide Roll.* *Abr.* p. 653. *Gibs. Cod.* p. 674.

This general rule, that none but *spiritual* persons or corporations may prescribe in *non decimando*, is to be understood with several exceptions.

FIRST; That the King as being *mixta persona*, i. e. Who are exempt
a mixed person, may prescribe *de non decimando*; that as from *tythes*, such he is capable of tythes. *Vide Gibs. Cod.* p. 674. *Jones W.* p. 387. *Mo.* p. 483.

SECONDLY; That the lessee, tenant at will, and copyholder of a *spiritual* person, though a *layman*, shall,

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in this respect, enjoy the exemption of the lessor, who is supposed to reap the benefit of it, in reserving so much the greater rents, by reason of such exemption.

Vide 1 Roll. Abr. p. 653. Degge, p. 2. c. 16. 2 Rep. 78. 1 Leon. p. 248. 1 Cro. p. 785.

THIRDLY; That a county, or part of a county, may well plead a custom *de non decimando*, in respect of this or that particular tythe; as hath been pleaded and allowed in the case of *tythe milk of ewes*; and of *tythe of underwood* in the wild of *Kent*, and in *forty parishes* in the wild of *Sussex*. A single parish may not prescribe *de non decimando* for particular tythes; nor may any larger district plead a custom, absolutely to have their lands freed from the payment of all tythes, without any thing in lieu. And lest this allowance of a custom, *de non decimando*, to laymen, in any case, should seem to break in upon the general rule, the distinction which hath been laid down is this: That in things tytheable by *custom* only, and not *de jure*, a county or hundred may prescribe in *non decimando* generally; for in that case they are discharged, without a custom to the contrary; so that it is but to insist on the old right, against which the custom hath not prevailed; but for things which are tytheable *de jure*, a county or hundred cannot prescribe in *non decimando* no more than a particular person; for it would be absurd to say, that a hundred shall prescribe in *non decimando*, where the particular persons of which it consists cannot so prescribe. *Vide 2 Salk. p. 655. Lord Raym. p. 187. Gibs. Cod. p. 674. 1 Roll. Abr. p. 653, 654.*

It was long a question, whether a lay impropriator, as well as a clergyman, be intitled to recover the tythes, without proving payment; or whether a *non decimando* may be pleaded against a lay impropriator; but was at last determined, That a lay impropriator is under no necessity of proving payment of tythes unto him. *Vide Bumb. p. 274.*

It has been determined in the *Exchequer*, that there can be no *prescription* in *non decimando* against a *lay rector* any more than against a *spiritual rector*; and that they are equally intitled to tythes *of common right*; and that it is sufficient for a *lay rector* to set forth in a bill

a bill brought, that he is seised of the impropriate rectory; and if he maketh out his title to that, it will be sufficient, without putting him to the proof of having received tythes. *Vide Bumb.* p. 325.

If a vicar sue for tythes, and the parishioner, being a layman, denies that the said tythes are due to him, in such a case, unless the vicar shall prove that the tythes in question are due to him by *endowment* or *prescription*, he shall fail in his suit; the reason is, because all the tythes *de jure*, or in presumption of law, belong to the rector, and therefore the vicar shall receive only those tythes which he enjoys by *custom* or *prescription*, or by the *endowment*. *Vide Ough. Ord. Judg.* p. 264.

A *modus decimandi* is, when lands, tenements, or hereditaments, have been given to the parson and his successors, or an annual certain sum, or other profit, always, time out of mind, to the parson and his successors, in full satisfaction and discharge of all the tythes in kind of such a place. It may be pleaded by the lord of a manor for the tythes of his manor, on account of lands of the gift of one who was lord of the manor, and held by the parson and his successors, time out of mind; and by a parish or hamlet, for this or that sort of tythe, by reason of lands enjoyed by the parsons time out of mind, within such parish or hamlet; and LASTLY, by any private person for his own lands, or part thereof, in consideration of a certain sum of money, or other recompense. *Vide Gibs. Cod.* p. 674. *Degge*, p. 2. c. 16. 3 *Cro.* p. 587.

Explanation de
modus deci-
mandi.

To make these a good *custom* or *prescription*, it must have the several qualifications following: As first; *What makes a good custom or prescription.* every *modus* must be supposed to have had a reasonable commencement, and in every *prescription de modo decimandi*, it is to be intended the rate tythe was the full value of the tythe at the time of the original composition; for it cannot be presumed that the *bishop*, *patron*, and *ordinary*, would make a composition to the prejudice of the church; and if the *modus* do not now reach the value, it is to be intended that either the tythes are improved, or else that money is now become of less value, which makes the present inequality. *Vide Degge*, p. 2. c. 16.

A composition
real, what it is.

By *composition real* is meant where the present incumbent of any church, together with his patron and ordinary, do agree by deed under their hands and seals, or by fine in the King's court, that such lands shall be freed and discharged of the payment of all manner of tythes for ever, paying some annual payment, or doing some other thing to the ease, profit, or advantage of the parson or vicar to whom the tythes did belong. These *real compositions* have ever been held and allowed here in *England* to be a good discharge of the payment of tythes. From these all *prescriptions de modo decimandi* first took their rise and beginning; since the *statute 1 Eliz.* (in the case of *archbishops* and *bishops*) and *statute 13 Eliz.* (in the case of all other *ecclesiastical corporations, sole and aggregate*) it is agreed, that no *real compositions*, any more than *alienations*, can be made; since all grants are thereby expressly restrained and made void, which are not according to the tenor of these statutes. And the only *modus* that can grow now, must be from the inadvertency of the clergy, acquiescing in the self-same agreements, from one successor to another. *Vide Gibs.* p. 675, 676.

Where a *real composition* hath been made, if the lands discharged thereby be transferred or granted to another, the *feoffee* or *grantee* shall have the benefit of it. *Ibid. Jones W.* p. 369.

It is necessary to shew that the *modus* had at first a reasonable commencement; for these *moduses* having been from time immemorial, none can know but there were such circumstances in those *ancient* times as might have made such a composition reasonable, though at present they may not be discoverable. It is enough to satisfy us, at this great distance of time, that the *parson, patron, and ordinary*, before the *restrictive statutes*, might bind the revenues of the parson; and that all these *moduses* must have had their commencement from an instrument signed by the *parson, patron, and ordinary*; but there can be no colour to say that, because such instrument in so great a length of time hath been lost, there the *modus* shall be lost also. Indeed, so far

the law hath gone in favour of the church, as that if the instrument which the *parson*, *patron*, and *ordinary* had given to a layman, owner of such a farm, to discharge the farm of all *tythes*, (though this would be good while the instrument could be shewn) should be once lost, this being a privilege in *non decimando*, the privilege would be lost by the loss of the deed. *Vide 2 P. Will. p. 573. Gibs. Cod. p. 675.*

The *modus* must be something for the benefit and interest of the *parson*, and therefore the finding *straw* for the body of the church; the finding a *rope* for a *bell*; the paying *five shillings* to the *parish clerk*; the paying a *quit-rent* to the *lord of the manor*; when these have been urged as discharges from *tythes* in kind, the *moduses* have been held not to be good. *Vide Degge, p. 2—16. Gibs. Cod. p. 674. Marbs. 65—91. 1 Leon. 94. Siderf. p. 259.*

The *modus* must not be one *tythe* paid in consideration of another; as it must not be to pay *tythes* of other kinds to be discharged of *tythes* for *dry cattle*; it must not be so much for every *cow* and *calf* for the *tythe* of *herbage*. *Vide Gibs. Cod. p. 574. Degge, p. 2. c. 16.*

A *modus* must also be something in its kind different from the thing that is due; and therefore a *load of hay* in lieu of *tythe hay*, or certain *sheaves of corn* for all *tythes* of *corn*, is not a *good prescription*; but it hath been said that this holds only in case the things are *de jure* *tytheable*, and not by *custom* only. *Vide Degge, p. 2. c. 2. Gibs. Cod. p. 675.*

A *modus* must be certain, and if it is uncertain, no length of time will make it good. For example, a *prescription* to pay a *penny*, or thereabouts, for every acre of *arable land*, is void for the uncertainty. *Vide 2 P. W. p. 572.*

Many *moduses* have been set aside in regard that no day of payment was set forth by the defendant. *Vide case Whiteball and Offley, Trin. 5 Geo.*

In

In the case of *Goddard, rector of Castle-Eaton in Wilts, v. Kable*, the defendant insisted upon several *moduses*, viz. three-pence for a *milk-cow*, three-pence for a *lamb*, three-pence for a *colt*, one penny for a *garden*, and the like; but they were all set aside, in regard no time for the payment thereof was ascertained by the defendant. *Vide Easter 8 Geo. Goddard v. Kable.*

The general maxim on which a modus is determined.

The maxim these decrees go upon is, that tythes in kind being a provision made by law for the clergy, which become due at a certain determinate time, and which, if not then set forth, are immediately demandable, shall not be taken from them by an uncertain payment, which becomes due on no determinate day, and which they cannot know when to demand, or go about to receive, if it be withheld. Besides, that such uncertainty lays a foundation for many disputes. *Vide 2 B. Eccles. L. 395.*

A *modus* must be *ancient*, and therefore, if it is any thing near the present value of the tythe, it will be supposed to be of late commencement, and for that reason will be set aside, as in the case of *Benson, proprietor of Bromley St. Leonard, Middlesex, against Watkins and others. H. 3 Geo.* the following *modus*, viz. five shillings an acre for tythe of winter corn; four shillings an acre for summer corn; two shillings and sixpence an acre for upland meadow; and three shillings an acre for low land, were set aside as too big.

A *modus* must be something durable, because the tythe in kind is an inheritance certain, and it is against nature that it should be extinguished by a recompence not as durable at least, though not so valuable; for this reason, *four-pence* to be paid yearly by two persons inhabiting two such houses, in consideration of all tythes, hath been adjudged ill, because the houses may decay, or none live in them. *Vide Gibs. Cod. p. 675. 1 Cro. p. 139.*

Custom or *prescription* must be constant, without interruption, and perpetual, from the time whereof the memory of man is not to the contrary; for if there had been frequent interruptions, there can be no *custom* or *prescription*

prescription obtained; when such *custom* or *prescription* is obtained, a disturbance for ten or twenty years shall not destroy it. *Vide Degge*, p. 2. c. 13.

It is not every consideration that will make a good *modus*, so a *modus*, though founded upon a good consideration, may be several ways discharged, and tythes become due in kind: (1.) Where land is converted to other uses; so when the *prescription* is for *hay* and *grass*, especially in so many acres of land, if the *land* is converted into *hop-garden* or *tillage*, the *prescription* is gone. (2.) By the alteration or destruction of the thing for which the money was paid; as where *two fulling-mills* were under the same roof, and turned into a *corn-mill*; where also there was *one pair of stones in a mill*, and another pair was added; and where the *water-course* was altered by the owner, and the *mill* was pulled down and re-edified upon it; in all these cases it has been *adjudged*, that the *modus* was gone. Where a man was seised of *eight acres of meadow*, and *one of pasture*, for the tythes whereof he had paid, time out of mind, *five shillings and four-pence*, and afterwards the owner built a *corn-mill* upon the same, it has been *adjudged*, that he should pay no other tythes for the *corn-mill*, because the land was discharged by the *modus*. 2 *Inst.* 490. *Gibb.* 675. 1 *Roll. Abr.* 651. (3.) By *non-payment* of the consideration, or payment of tythes in kind, for so long a time, as to destroy the possibility of making proof that such *custom* or *prescription* was: but an interruption for some short time only will not discharge it, especially if made by the lessee to the prejudice of the lessor. *Vide Wats. c. 47. Gibb. Cod. p. 675. 2 Bulst. p. 240.*

The rule is, that the *modus* is to be sued for in the *ecclesiastical* court, as well as the very tythe; and, if it be allowed between the parties, they shall proceed there; but if the *custom* be denied, it must be tried at the *common law*; and if it be found for the *custom*, then a consultation must go, otherwise the *prohibition* standeth. The like is affirmed, in case a *jury*, upon an *issue* joined in a *prohibition* upon a *modus decimandi*, find a different *modus*: since a *modus* is found, they shall

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shall not have a consultation. *Vide 2 Inst. p. 490.*
Gib's Cod. p. 691.

Reasons why
courts of law
prohibit the
spiritual court
from trying a
modus.

The principal reasons why the courts of *common law* prohibit the *spiritual* court from trying of *modus* are, that whereas every *modus* is less than the real value, the rule of the *canon law* is, that less than real value shall not be taken, and that a *custom* to the contrary is void: and that the *ecclesiastical* and *temporal* laws differ in the times of limitation; *forty years* or under making a good *custom* by the *ecclesiastical* laws, whereas by the *temporal* laws it must be beyond the time of memory. *Vide Gib's Cod. p. 691.*

How the spiri-
tual courts pro-
ceed.

The *spiritual* courts have commonly allowed, and do allow, pleas of *modus decimandi*; and the averment in the prohibition is not that they do take cognizance, but that the plea hath been offered and refused; which supposeth, that if the plea be admitted, the prohibition ought not to go. It hath been affirmed by *Doderidge and others*, that the *spiritual* court may as well try the *modus* as the right of *tythes*; and that a prohibition is not to be granted till the *spiritual* court either refuse to admit the plea, or proceed to try it by methods different from the rules of the *temporal* law, as to the time of limitation, or number of witnesses, or the like. *Lord Coke* contended for the contrary doctrine. It was declared by *Kelynge and Twisden*, in the case of the *Bishop of Lincoln against Smith*, that in case on a *libel* for a *modus decimandi*, if the *spiritual* court allow the plea, they may try it. *Vide Gib's Cod. p. 691.*

It seems settled now, that if a *modus decimandi* be sued for in the *ecclesiastical* court, a prohibition lies to stop the trial of it, if the *modus* be denied; and the reason is, not upon the account that the *spiritual* court wants jurisdiction, but in regard of the notion the *temporal* law hath of *custom* different from the *spiritual*. Every *modus* is due by *custom*; it is the *common law* only that can determine what time and usage with us shall be sufficient to create such a *custom*; that is, time beyond all memory to the contrary.

trary Whereas, by the *spiritual* law, sometimes *ten* years, sometimes *twenty*, they will *adjudge* sufficient to create a custom. Prohibitions in such cases are granted; not because the *spiritual* court hath not jurisdiction of the matter, but in respect of the trial, which is to be by the *temporal* law only: and if upon the trial it be found for the *modus*, the proceedings shall go on in the *spiritual* court; if against the *modus*, the prohibition shall stand. *Vide Wats. c. 56.*

C H A P. IV.

Of things tytheable, and things not tytheable.

Acorns.

ACORNS (which are considered under the name of *masts*) are the chief of those things which the ancient laws call *pannage*. *Vide Gibs. Cod. p. 676.*

Mast of oak or beach.

Mast of oak, or beach, if sold, the *tenth penny* is payable for the tythe thereof; but if eaten by *swine*, then the *tenth value* or worth thereof. *Vide Godol. p. 417. Lindow. p. 200.*

Acorns seem not different from that of other things tytheable; when gathered, they shall pay tythes in kind; and the *tenth penny*, or *two shillings* in the pound, in all such like cases, is not to be considered as exclusive of the tythes to be paid in kind, but only as reasonable satisfaction, when the parishioner dispose of his whole produce unsevered. Where the acorns are not gathered by the owner, but suffered to be fed upon as they drop, this case seems to fall under the same equity as where *turnips* are fed on by unprofitable cattle, for which an agistment tythe shall be paid. *Vide 2 B. E. L. p. 428.*

The rule laid down by *Rolle* is that of *after-mowth*; that is, the *second mowth*, tythes shall be paid *de jure*, without a *special prescription*, to be discharged by payment of the tythes out of the *first mowth*, and then it shall be discharged. *Vide 1 Roll. Abr. p. 640.*

Sir *Simon Degge* held, that tythes are not to be paid of the *after-mowths of meadows*, unless if the meadowing be so rich that there are *two crops of hay* got in *one year*, then the parson shall have tythe as well of the latter as of the former crops. *Vide Degge, p. 2. c. 3.*

If the occupier of the land can prescribe, that in consideration the owner doth make the *first tonsure* into good and sufficient *hay*, and set it forth in cocks sufficiently dried, then he shall be sufficiently discharged of the tythes of the *after-mowth*; this is a *good prescription* and discharge, by reason of the labour and cost he bestowed in making the *first tonsure* into *hay*. *Vide 1 Roll. Abr. 648. 1 Cro. 660. 2 Cro. 42—116. Moor. 910.*

If the *prescription* be, to be discharged of the tythe of the *after-mowth* only upon consideration that they have used, time out of mind, to cut down the grass of the *first-mowth*, and the same to tred and shake abroad: and the same grass so dispersed and cast abroad together into ricks and winnows, and put into small cocks at their own costs; this is sufficient, though it be not made into *perfect hay*. *Vide Cro. Jac. p. 42.*

Agistment is the keeping or depasturing of *sheep*, or *Agistment*, what of any kind of cattle, whether *beasts* or *horses*. *it is.*

This tythe is the tenth part of the value of the keeping or depasturing of such *sheep*, *beasts*, and *horses*, as are liable to pay it.

It is due *communi jure*, as well as the tythe of *corn* or *hay*; it has this peculiar difficulty attending it, viz. that it cannot be taken in *kind*. For as it is no otherwise cut or mown, than by the mouth of the animal, along with the other nine parts, and consumed at the same time, the person to whom it is due can only receive the value of it.

All sheep are liable to pay this tythe, from the time of their *last shearing* till the time they are slaughtered, sold, or removed out of the parish.

All beasts and *horses*, not actually yielding milk, nor employed in husbandry; *heifers*, from the time of their being weaned till they calve; or should they be sold, or removed out of the parish before they calve, then from the time of their being weaned till the time they are so sold or removed out of the parish.

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Steers, from the time of their being weaned till they are killed or sold out of the parish, whether *fat* or *lean*, except during such time as they are actually worked at the *plough* or in the *team*.

Horses, whether *colts* or *fillies*, are likewise liable to pay this tythe from the time of their being able to live without the mare.

Colts, till they are sold or removed out of the parish, or employed in the business of husbandry.

Fillies, till they are so employed, or bear foals.

All such *sheep*, *beasts*, and *horses*, (the two last of which are commonly comprehended under the general denomination of *barren* and *unprofitable cattle*) are to pay a tythe for their agistment during the time they have been so kept in any parish, according to the value of the keeping of each per week.

The two general rules for payment of agistment tythe are,

1st. The parson is entitled to the tenth part of the produce of the land, or the value of it.

N. B. The produce comprehends all cases where the tythe can be taken in kind, as in hay, corn, &c. the value where it cannot, as in agistment.

2dly. So often as a new increase arises, so often a new tythe becomes due.

This rule is rather a consequence from the former than an independent proposition.

The *first* of the *two general rules* above laid down will rectify a mistake, which many, both of the clergy and lay tything-men have fallen into respecting *agistment tythe*, who have imagined that the persons to whom this tythe is due is entitled to the *tenth part* of the profit which the occupier of the land may at any time receive for the keeping of his *sheep*, *beasts*, and *horses*.

On this tythe the parson is only entitled to the *tenth part* of the produce of the land, or the value of it;

He has no claim upon the occupier or owner of the stock for any part of his profit; whether the occupier gains or loses, or what he gains or loses, by the keeping of his stock.

For example; if a farmer in the spring have a dozen beasts of equal value or price, which he sells off the latter end of the year; some for *five pounds* profit, others for *forty shillings*, the rest for none at all. The tything-man being entitled to no part of it, has no right to be resolved as to the particular profit he received from the keeping of each, but only to the *tenth part* of the value of the depasturage of each *per week*. If they were all kept upon the same land, or of the same goodness, they ought all to pay alike for the tythe of their *agistment*; those from which the occupier received no profit, or even was a loser by, as those from which he received the most; the improvement or *non-improvement* of the beasts depending solely upon the skill or ignorance of the occupier, in which the tything-man has no concern, and in which therefore, as he runs no hazard from the one, he ought to reap no advantage from the other: which may be exemplified thus:

1st. Of profitable and unprofitable stock kept together.

2dly. Of the same lands paying tythes several times in the same year.

3dly. Of the same stock, paying several different tythes of their agistment in the same year.

It very seldom happens, that an occupier of land stocks his particular pastures or fields either with all profitable or all unprofitable stock. They are generally kept together: but this need occasion no difficulty, much less any dispute, in ascertaining the tythe of those which are liable to pay it for their agistment. So many, and such stock as are so liable, which have been kept upon such lands, are to account for their tythe according to the value of the keeping of each *per week*, the same as if there had been no other stock kept upon such lands along with them; and such other stock as are profitable, viz. *milch-cows*, *mares* with their *foals*, *ewes* and

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lams, and working horses, and therefore not liable to pay this tythe, are to account for their tythe in a different way, either in kind or by *modus*, for each, as follow :

"Where profitable and unprofitable cattle feed together, tythe shall be paid in kind for the profitable, and agistment for the unprofitable."

For example ; an occupier of land mows any of his pastures in *July*, and pays the tythe of the hay in kind ; at the proper time he turns feeding beasts upon the *eddisb* or *after-graft*, which must pay the tythe of their agistment during the time they are kept upon it, according to the value or usual price of the depasturage of such beasts *per week* upon such *eddisb* or *after-graft*, in a parish or neighbourhood.

After the *eddisb* is consumed and eat up by these beasts, and other barren and unprofitable cattle are put and kept upon these same pastures from that time till the next accounting day, they must pay the tythe of their agistment during the time they have been so kept upon those pastures, according to the keeping of each such beast or horse *per week*, upon such lands at that time, and in that state.

Where the same land has paid three different tythes, or tythes three different times in the same year, viz.

1st. *Hay in kind.*

2dly. *Agistment tythe for the eddisb or after-graft.*

3dly. *And for the grass after the eddisb was eat off.*

For example ; a grazier shears all his sheep the beginning of *July*, and, after paying the tythe of their *Wool* in kind, in order to feed those that will be fit for sale that year, turns them for *two months* upon the *eddisb* of lands, which have before in the same year paid tythe of *hay in kind*. The *eddisbes* in that time being consumed, these *sheep* are turned for *three months* more upon his best feeding *summer-eaten lands* : and from that time

put

put upon turnips for two months more; and, being then fat, are sold to the butcher, or removed out of the parish for sale,

In this case, these sheep must in the same year pay the several following different tythes, viz.

1st. *Wool in kind.*

2dly. *Tythe of agistment.*

From the time they were shorn till sold for slaughter, or removed out of the parish for sale, viz. *seven months*, according to the value of the keeping of each sheep *per week*, whilst kept upon such,

1st. *Eddib or after-grafts.*

2dly. *Summer-eaten land.* And

3dly. *Turnips respectively.*

Turnips when eaten.

1st. *By sheep removed out of the parish before their next shearing.*

2dly. *By such sheep as are kept afterwards in the same parish till shorn.*

3dly. *By both sheep and beasts, both profitable and unprofitable.*

In several counties great quantities of turnips are grown every year; in others, the common or town field is, by agreement of the several occupiers, entirely turniped every fourth year.

Turnips are generally eaten by sheep of some kind or other.

By feeding sheep, which some months after the time of the last shearing are turned to feed upon turnips, and when so fatted are all slaughtered, sold, or removed out of the parish before they are shorn again.

In this case, where the turnips are not consumed by the occupier's own sheep, but by those of some other person, either of the same or any other parish, taken in to keep for hire, either at so much *per week each*, during their being so kept, the *tenth part* of the bargain is due to the tything-man, payable by the owner of the turnips, not by the owner of the sheep.

But where the turnips are eaten by the occupier's own sheep, the tythe must be estimated; either

1st. *According to the value of the turnips per acre.* Or,
 2dly, *According to the value of the keeping of each per week of the sheep which have eaten them.*

Turnips are sometimes eaten by *ewes* or *lambs*, or both, which are afterwards kept in the same parish till after they are shorn again.

In this case, whether such turnips are eaten by the occupier's own sheep, or by those of any other person, no tythe of agistment for the keeping of such sheep, nor in any respect for such turnips, is due; since the sheep which consumed them were kept in the parish till they yielded to the proper tything-man the tythe of their *wool*, or the *customary modus* or *composition* for it.

Where turnips are eaten by sheep, some of which are slaughtered, sold, or removed out of the parish before; others kept till after they are shorn; or, where any kind of cattle, whether *profitable* or *unprofitable*, or both, are kept upon turnips along with sheep: in all such cases, the tythe of agistment due can only be ascertained from the value of the keeping of each such sheep as were sold or removed out of the parish before shearing: and of the *barren* and *unprofitable* cattle *per week*, during the time of the keeping of each upon such turnips, since the last accounting day, in the same manner as where all such *sheep* and *barren* and *unprofitable cattle* have been kept together upon grass land, as instanced before.

If a foreigner, that lives in another parish, depastures ground for cattle bred to the plough and pail, to be

be employed in a foreign parish, he shall pay tythe for the agistment of such cattle. *Vide Degge*, p. 2. c. 5. *Lord Raym.* p. 129.

If the same cattle are turned off to be fattened, and are grazed, there tythes of agistment shall be paid, since they are no way beneficial to the parson in any other tythes. The same doctrine holds of *cows* after they are become barren, and are fattened for sale. *Vide Gibs. Cod.* p. 676. *Show. Ca.* p. 193.

Horses, while they are kept for the use of husbandry, *Horses.* no tythe shall be paid; if for sale, or to carry coals, or for any other use that yields a profit to the owner, and not profitable to the parson, tythe shall be paid for them. *Vide Gibs. Cod.* p. 676. *Popb. p. 126. 2 Cro.* p. 430. *Heth. 93. 1 Roll. Abr.* p. 646.

Saddle-horses of travellers, or others taken in as *saddle-horses*, *guests horses*, it has been determined that tythe of agistment is due, because no profit otherwise accrues to the parson from such cattle. *Vide Bunb. 3. 1 Roll. Abr.* p. 641.

The tythes for depasturing unprofitable cattle ought *Agistment-tythes* to be paid by the occupier of the ground, and not by *by whom to be paid.* the owner of the cattle. *Vide Bun. 3.*

If the occupier of the ground were not in such case made liable, it would be greatly inconvenient for the parson to sue every owner of the beasts, and perhaps it would be hard to be known, and the trouble and expense would be infinite. *Vide Roll. Abr.* p. 656. *Degge,* p. 2. c. 5.

If it is a common that is depastured, the owner of the cattle (if known) must pay the tythes, and not the owner of the soil, for the owner of the soil hath no profit by it. *Vide Bunb. p. 3.*

If tythe of agistment is refused, a suit may be com- Remedy for re- menced in the spiritual court against the occupier of the fusal. land, if for guest cattle, it may be brought either against

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the occupier of the land or owner of the cattle. *Vide Gibs. Cod. p. 677. Jones W. p. 254. Hard. p. 184.*

Alders.

It was determined 5 *Jac. 1.* that tythe of *alders* shall be paid, although they be of *twenty years* growth, and more. *Vide Gibs. Cod. p. 677. 2 Cro. p. 199.*

Altarage.

It was determined (according to the definition of *altaragium*, given by the Bishop of London, upon conference with the judge of the admiralty, the dean of the arches, and four other doctors of the *civil law*) that by *altarage* were understood *tythes of wool, lambs, colts, calves, pigs, goslings, chickens, butter, cheese, hemp, flax, honey, fruits, herbs*, and such other *small tythes, with offerings*, that shall be due within the parish where produced. *Vide Gibs. Cod. p. 677.*

Apples.

On *libel* in the *spiritual* court for tythe of *two pecks of apples*, the owner of the orchard prayed a *prohibition*, on surmise that he had but *two pecks* in all, and that those were stolen; *resolved*, that if the owner suffered another to pull his apples, the parson shall have *tythes*; *otherwise*, if they be taken by persons not known, (for they are not *tytheable* before plucking) unless they are taken after the proper time of gathering, through the neglect of the owner in letting them hang too long. *Ibid. and Holt. p. 100.*

Ash.

This is determined to be timber, and so tythe free, being of or above *twenty years* growth. *Vide Gibs. Cod. p. 677.*

Asp-trees.

These, with *beech, &c.* have been deemed timber, and tythe free, in *Buckinghamshire*, where, in the beginning of the last century, timber was scarce, and further, at that time this wood was used for making arrows for the defence of the realm. *Sed quere now. Ibid. 2 Roll. p. 83.*

Bark.

Where the tree is a *timber-tree*, it shall pay no tythe, being privileged by the body of the tree. *Vide Gibs. Cod. p. 677.*

Pease.

Where a person gathers *green pease* to spend in his *houle*, and there spends them in his family, no tythes shall

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shall be paid for the same; otherwise if he gathers them to sell, or to feed hogs, in that case they become tytheable. *Vide 1 Roll. Abr.* p. 647. *Degge,* p. 2. c. 3.

Note. Beans and peas, set and planted in rows, are deemed small tythe; they are payable to the impropriator, if the vicar cannot shew an endowment or usage to the contrary. *Vide Bunt. p. 169.* *2 B. E. L.* p. 400.

By the common law this is not timber, and ought *Bees.* therefore to pay tythe, of what growth soever it be; where it hath been pleaded, that, by reason of the scarcity of timber in this or that county, (as Buckinghamshire, &c.) they are forced to use it for timber; the court hath adjudged it to be privileged by *stat. sylva cædua.* *Vide Gibs. Cod.* p. 677. *1 Roll. Abr.* p. 640. *1 Mod.* p. 54. *1 Roll.* 355. *2 Roll.* 83.

These are reckoned among the things that are *feræ Bees.* *naturæ*, in their wild state, and tythe free, yet, being gathered into hives, they become the property of some particular person, and then lose that privilege, and are tytheable.

It has been determined, that the tythe due for them shall not be paid in kind by the *tenth swarm*, but that the *tenth measure of honey*, and the *tenth pound of wax*, shall be sufficient. *Vide Gibs. Cod.* p. 677. *1 Roll. Abr.* p. 651. *3 Cro. p. 404.*

Determined, that tythes of birch shall be paid, al- *Birch.* though of twenty years growth. *Vide Mo. p. 907.* *2 Cro. p. 199.*

This is tytheable, though dug up in order to clear *Broom.* the land for tillage, but otherwise if used for husbandry. *Vide Gibs. Cod. p. 67.*

Of common right, the *tenth calf* is due to the parson, *Calves.* to be taken when it is weaned, and not before; the spiritual court have determined, that if there are but *seven*, the parson shall have *one calf*; if under *seven*, then a *half-penny*, or what custom shall direct for each calf. The canon law has left it to the choice of the parson, *when*

when they are under *seven*, whether he will proceed in that manner, or let them run on till *one* becomes due in the ensuing year; the *common law* will not allow of this, because tythe must be paid annually; and so, when the parson sued for a *seventh* calf, becoming due in that manner, a *prohibition* was granted. *Vide Gibs. Cod. p. 678. 1 Roll. Abr. p. 648. Letch. 254.*

Where there are above ten calves, lambs, pigs, or the like, the tythe of the odd number above *ten* shall be paid for according to the value, and not carried over to the next year. *Vide Bunb. p. 198.*

A *custom* of paying ~~the tenth~~ part of the price for every *calf* that is sold is a good *custom*. *Vide Gibs. Cod. p. 678. 1 Roll. Abr. p. 648.*

Note. The distinction of cattle, as *tytheable* or *not tytheable*, see head *Agistment of Cattle*.

Cattle on waste grounds.

The tythe of cattle feeding upon wastes or commons, where the bounds of parishes are *uncertain*, shall be paid to the incumbent where the owner inhabits, according to *stat. 2 Edw. 6. cap. 13.* unless exempt by *custom* or *prescription*, and limited to some certain incumbent. *Vide Gibs. Cod. p. 678. Sav. p. 60.*

Chalk.

This is held not to be subject to tythe, being of the substance of the earth, and part of the freehold. *Vide 2 Inst. p. 651. 1 Mod. Rep. 35. 2 Keb. p. 696.*

Cheese.

Tythe of *cheese* can only be due where tythe is not paid of the *milk*; and payment of the *tenth cheese* in one part of the year; for example, from *May-day* till the *first of August*, may be a good *prescription* for the discharge of tytheable milk for the whole year. *Vide Gibs. Cod. p. 678. 1 Cro. p. 608. Mod. p. 909.*

Black cherries.

These have been held to be subject to tythe. *Vide Bunb. p. 184.*

Cherry trees.

These, in the 17th year of *Jac. I.* were held to be *timber-trees* in *Buckinghamshire*, and not subject to tythes, *sed quere now*. *Vide Gibs. Cod. p. 678. 2 Roll. p. 83. On*

On a prohibition to stay suit in the spiritual court for Chickens. tythe chicken, determined that they were not tytbeable, because the eggs were tythed. *Vide Gibs. Cod. p. 678. 2 Roll. 83.*

This is not subject to tythe, being of the substance Clay. of the earth. *Vide 2 Inst. p. 63. Marsh. 55.*

Held, that if a man sow his land with clover, and clover, make his profit of the seed, this being a grain, the parson shall have a tythe of it; if it is converted into hay only, and make his profit of the hay, the vicar being endowed of tythes of hay, shall have it as a small tythe. *Gib. Cod. p. 405. Skin. p. 341.*

Clover and vetches, cut green, and given to cattle Clover used for cattle in husbandry. used in husbandry, appears not subject to tythes. *Vide Bunb. p. 279.*

Clover grass shall go to him that hath the tythe of clover grass. hay. *Vide Wats. cap. 39.*

Where the vicar is endowed of tythe hay, decreed, that he was thereby intitled to clover, saintfoin, and rye-grass, which are species of hay, it being the genus. *Vide Bunb. p. 79.*

Note. *Clover-seed, in its nature, is a small tythe, and clover seed.* so determined. *Vide Bunb. p. 344.*

A modus may extend to clover, although of late only brought into England, if the modus be such as covers all tythes of hay. *Ibid. p. 20.*

This is exempt from payment of tythes, being of coal. the substance of the earth, and not annual; tythe being due only by custom. *Vide Gib. Cod. p. 678. 2 Inst. p. 651. 3 Buls. p. 114. 2 Keb. p. 177.*

The time of payment of the tythe of calves, colts, calves, colts, kids, pigs, and such like young cattle, is when they &c. are so old that they may be weaned, and live without the dam upon the same food that the dam eateth, unless the

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the custom of the place confine the payment to any certain time or age. *Vide Degge, p. 2. c. 6.*

Conies.

These being *feræ naturæ*, are not tytheable of common right; if they are sued for, it must be on the ground of custom. *Vide Gibs. Cod. p. 678. 2 Roll. p. 458. 1 Keb. 602. 2 Keb. p. 141—452.*

Note. The distinction is, that conies spent in the house shall not pay tythe, but such as are sold shall; the same doctrine has been frequently held as to pigeons. Vide Gibs. Cod. p. 679.

Corn.

This is deemed a *predial great tythe*, and is tytheable according to the custom of the place; it is usually tythed by the *tenth shock, cock, or sheaf*, where the custom of the place is not otherwise. *Vide God. Report, Can. p. 393.*

How tythe are to be set out.

Note. The owner of the corn ought to cut down and prepare the same, and to make it up into sheaves, cocks, or shocks; if the owner refuse to do it, the parson may sue him for the same in the spiritual court; though the suit must be laid specially, viz. for not setting them forth in cocks, and not generally, for not setting them forth. If the corn is made into sheaves, he is not bound to set it up in heaps, unless the custom of the place oblige him thereunto; but having bound it into sheaves, or made it into cocks, he may set forth the tythes thereof, and thereby they become lay chattels, and then he may heap his own sheaves, or do with them as he pleases, and the tythes being set forth, the owner is not bound to watch or look after them till the parson carries them away. Vide Wats. c. 49.

Where custom governs.

If the custom of the place be, to measure forth to the parson the tenth part of the corn whilst growing upon the land, it seems that this manner of tything ought to be observed; or if the custom be, that the parson ought to have for his tythe of corn the tenth land of corn, beginning at such land as is next to the church, this custom is good. *Vide Wats. c. 49. 2 P. Will. p. 659.*

If.

If the custom be, that if the odd *sheaves* or *shocks*, under the number of *ten*, shall not be tythed, by reason that they set up the tythes in *heaps* or *shocks*, which of *common right* the owner of the corn is not bound to do; the owner is not bound to divide the said *sheaves* or *shocks*, and set forth the *tenth* thereof; for that such custom upon such consideration is good. *Vide Wats.*

¶. 49.

Dotards, or old decayed trees, having been once privileged, as *sylva cædua*, shall not pay tythes, though afterwards they become rotten, and are cut down for the fire; and yet it is certain the foundation of the privilege, (viz. their usefulness in the way of timber) is gone; and so the privilege, if it subsist at all, must subsist without foundation; and though *More* reports the case as clearly determined, *Coke* says the court was divided. *Vide Gibs. Cod. p. 679. Mod. p. 908. 2 Cro. p. 101.*

Dotards, or old decayed trees.

These being kept in a *dove-house*, may pay tythe, by Dover custom. *Vide Gibs. Cod. p. 679. 1 Vent. 5.*

Determined, that the paying *thirty eggs* in *Lent* is a good *modus* for all tythes of eggs. The general rule is, that where tythe is not paid of *chickens*, there it is due of *eggs*; and the *modus* just now mentioned seems to cross the rule of the law, that every *modus* ought to be somewhat (as to kind) different from the thing that is due. If a certain number of *sheaves*, for all *corn*; or a *load* of *hay*, for all *hay*, it is ill; it seems by no means clear how *thirty eggs* for all eggs can be good, allowing them to be things that are *de jure* tytheable, which is not denied. But the distinction here taken is, that the *thirty eggs* are to be paid whether he had *hens* or no, and also are to be paid at a certain time; and so that payment, in the manner of it, differs from the payment of the tythe. *Vide 1 Roll. Abr. p. 648. 2 Salk. p. 656.*

Where paying a certain number of eggs is a good modus.

Where there is a *custom* to pay *thirty eggs* in *Lent*, the custom binds the parishioner to the payment of so many at that time; and whether a parishioner has *hens* or not, he is obliged to it; so that he may be obliged

liged to buy eggs to pay the parson; and that makes it a good custom. If the custom was that he should pay thirty eggs of his own hens, the custom would be ill. *Vide Lord Raym. p. 360.*

Elm.

This is deemed to be timber, and within the privilege of *fylva cædua*, or wood of twenty years growth, so as to pay no tythe, if it be of or above twenty years growth. *Vide Gibs. Cod. p. 679.*

Fallow.

Determined, that if the parson hath had tythe-corn one year, and the land lies fallow, without sowing, the next year, in order to be ready for plowing or sowing the third year, that the parson shall not have tythe for the second year; because its lying fallow meliorates the land, and gives the parson a larger tythe the third year. *Vide Gibs. Cod. p. 679. 1 Roll. Abr. p. 642.*

Fens.

Being drained, shall not be privileged for the first seven years, under the name of barren land. *Ibid.*

Fish in the sea.

Held, that no tythe can be demanded of *fish caught in the sea*, because they are in no certain parish; which doctrine cannot hold of taking tythe in kind; because that is as expressly denied of *fish in rivers*, that they are tytheable *de jure*, though within the precincts of certain parishes, and taken by one who hath a particular *fishery*. It seems that if *fish are ferae naturæ*, and not tytheable *de jure*, but on the foot of *custom only*; and so with regard to the *personal tythe* that is due, it seems to make no difference, that *fish at sea* are in no parish, as long as the fisherman dwells, and lands in a parish. *Vide Gibs. Cod. p. 679. 3 Cro. p. 339.*

Fish in a river.

Fish in a river are declared not to be tytheable *de jure*; the river is described under the particular circumstance of a *common river*, and not *inclosed*, which shews that it was then thought that *fish in ponds*, and in *rivers inclosed*, and not *common*, were not to be reckoned *feræ naturæ*, but to be *de jure* tytheable; and that then being the property of *particular persons*, who had the *benefit* of them, was a *good reason* why they should be tythed.

On a question as to tythe of *fish* due by *custom*; which *Fish tytheable* by *custom*. *custom* was laid for all *fish* taken at sea, and brought to land, and sold within a certain parish, and also in another port; determined, that in case a double tythe may be payable, not only in *another port* where the *fish* is *sold*, but also where the *fisherman* inhabits; to which *three barons*, against the *lord chief baron*, said it was a *good custom*; for one tythe may be paid by *custom*, and one of *common right*. *Vide Bunb.* p. 43.

Adjudged a small tythe, notwithstanding its being Flax sown in large fields. Vide Gibs. Cod. p. 680. 1 Roll. Abr. 637. 2 Lev. 365. Skin. 341—355. Cart. p. 263.

By this name are commonly understood *hens, geese, Fowls, ducks, and turkies*; the last of these four have been declared *feræ naturæ*, and *not tytheable*; the other *three* are subject to pay *tythes*, (either in *eggs* or in the *young*, according to *custom*) but not in *both*. *Vide Gibs. Cod. p. 680. Mod. p. 599. 1 Roll. Abr. p. 642.*

As *apples, pears, plumbs, cherries*, and the like, when *Fruit* gathered, tythe in *kind* is due. Lord Coke says, *fruit-trees*, if they have paid *tythe-fruit*, and be cut down, and sold in *billet* or *faggot*, they shall not pay *tythe*; for the *fruit* and *tree* be not of *several kinds*; but *quere*, as they yield profit to the owner, which is the established rule for creating a *tythe* to the parson. *Ibid. and 2 Inst. p. 652.*

Adjudged, that fuel of any kind that is spent in the Fuel, parishioners own houses are not subject to tythe. Ibid. 1 Cro. p. 609. Mod. p. 909.

If a person keeps a house of *husbandry*, and makes *Furzes*, it appear that he used the *furzes* for *fuel*, or to make *pens* for his *sheep*, no tythe shall be paid; but otherwise if sold. *Ibid. 1 Mod. p. 609. 3 Keb. p. 635, Litt. p. 267. Hill. 1723. Bunb. 144—145.*

These pay tythe of *herbs and plants*, as *parsley, Gardens, sage, cabbage, turnips, saffron*, and the like, which are deemed *small tythes*, and may be demanded in *kind*; usually

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usually a certain consideration is paid for *these things*, either by *custom* or by *agreement* with the parson. If the *custom* be a *parochial custom*, or extending to gardens throughout the parish, the enlargement of a garden doth not make *tythe* due in *specie*; but otherwise if it was a *special prescription* for this or that garden. And the same doctrine holds as to orchards. *Vide Gibs. Cod. p. 680.*

Note. All garden ground in England shall pay tythes for the different crops; and turnips, when they are pulled out pay tythes, though never so often sowed, and though upon the same land. Vide Bunb. p. 10.

Glass-house.

Determined, that the profit of a glass-house, which grows by the *labour* and *industry* of man, shall not pay *tythe in kind*. *Vide Gibs. Cod. p. 680. Litt. p. 314.*

Gravel.

This is not subject to *tythe*, as being of the substance of the earth. *Vide Gibs. Cod. 680.*

Mistle.

Hazle, holly, willow, white-thorn, &c. being sued for in the *spiritual court*, a *prohibition* was moved, and obtained; on the suggestions, that they were of *twenty years growth*, and more; and, by the *common custom* of the place, were used for *timber* to *build* and *repair* their *ploughs*.

Hay mown to feed deer.

Hay, mown to feed deer, tythes are due of common right, and shall be paid, unless there be a custom to the contrary.

Head-lands,

Determined a good discharge from the tythe of hay, upon the head-land, that the owner reaped, bound, and shocked the corn; on supposition that the tenth ridge is the thing due for the tythe, and that the labour of the owner about the corn (to which he was not bound) was a good foundation of such discharge. Vide Gibs. Cod. p. 681. 2 Leon. p. 70.

A custom for head-lands sown with corn to be discharged of tythes, because fed with plough-cattle, or mowed and cut for that purpose; adjudged a good custom. Gibs. Cod. p. 681.

This tythe is now ascertained at *five shillings per Hemp and flax acre*, by *stat. 11 and 12 W. 3. c. 16.* which enacts,
"Whereas the sowing of hemp and flax is and would
"be exceeding beneficial to *England*, by reason of
"the multitude of people that are and would be em-
"ployed in the manufacturing of those two materials,
"and therefore do justly deserve great encouragement,
"and whereas the manner of tything hemp and flax is
"exceeding difficult, creating thereby chargeable and
"vexatious suits and animosities between parsons, vi-
"cars, impro priators, and their parishioners; for re-
"medying whereof it is enacted, that every person
"who shall sow any hemp or flax shall pay to the
"parson, vicar, or impro priator, yearly, the sum of
"five shillings, and no more, for each acre of hemp
"and flax so sown, before the same be carried off
"the ground, and so proportionably for more or less
"ground so sown; for the recovery of which sum or
"sums, the parson, vicar, or impro priator, shall have
"the common and usual remedy allowed of by the laws
"of this land."

SECT. 2. "Provided, that this shall not extend to
"charge any lands discharged by any *modus decimandi*,
"*ancient composition*, or otherwise discharged of tythes
"by law."

This tythe shall be paid, though above *twenty years* Holly
growth, unless on a special suggestion of scarcity of
timber to build and repair their ploughs. *Vide Gibs.*
Cod. p. 681. 2 Cro. p. 199. Mod. 30.

Resolved, that tythe of *honey* and *wax* ought to be *Honey*,
paid in *kind de jure*; and it is accounted a *predial tythe*.
Vide Gibs. Cod. p. 681. 3 Cro. p. 529. Jones W.
p. 447.

On a question for hops in *Kent*; *adjudged*, that they *Hops*, what they
were *great tythes*; but as for hops in *orchards* or *gar-* ^{are.}
dens, these were resolved to belong to the *vicar*, as
minutæ decimæ. *Vide Gibs. Cod. p. 681. Hutt. 78.*

Note. *Hops pay a predial tythe, and regularly are ac-
counted among small tythes.*

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On a case where the vicar was endowed of *small tythes*, agreed that he was thereby intitled to *hops*, being a *small tythe*, though of growth since the endowment. *Vide Bunn.* p. 79.

On a question whether a *modus* may be pleaded to be discharged of tythe of hops, 22 Car. 2. the suggestion was, that they paid so much *an acre* for *tythe-hops* time out of mind; the court denied a prohibition, because *hops* in *England*, (whether brought in during the reign of *Hen. 8.* or of *Queen Elizabeth*) were much later than the time of memory, and therefore no *prescription* could be pleaded. *Vide Gibs. Cqd.* p. 682.

A *prescription* to pay so much in lieu of all *small tythes* may include *hops*, and other such small things which have come in use of late years. *Vide Wats. c. 49. Bunn. p. 20.*

In the case of *Walton v. Tyers*, in the *Exchequer*, on appeal in the *House of Lords*, on solemn argument, determined, that the *tythe of hops* by *law* ought to be set out by *measure*, after they are picked from the bind or stem; and the decree was affirmed by the *Lords*. *Vide 2 B. E. L.* p. 419.

On motion for a *prohibition* to be directed to the *consistory* court of the *Bishop of Worcester*, to stay proceedings in a suit there for *tythes of hops*, upon suggestion of a *modus*, time whereof, &c. there used, that if the parson send a servant, &c. to pull *aliquam partem lupularum*, he shall have the *tythes* of them, &c. upon which a rule was made to shew cause why a *prohibition* should not be granted. And on cause being shewn, held, *First*; The custom is void for uncertainty; for it does not appear how much hops ought to be pulled, &c. *Secondly*; That it is an ill custom, because it is no benefit at all to the parson, but drives him to more pains than the law requires, to entitle him to that which by *law* he ought to have in the same manner without such pains. Of which opinion was the whole court, and therefore the rule was discharged. *Vide Lord Raym.* p. 504, 505.

Of Things Tytbeable, and Things not Tytbeable.

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A saddle-horse that is kept for pleasure *tythe of agist-* Horses for pleasure shall not be paid, because by it no profit comes in; it shall be paid for working-horses for the cart or plough, where they labour about such things as are profitable to the owner, and of no profit to the parson. *Vide 1 Bulſt. p. 171. Popb. 126. 1 Roll. Abr. p. 646. Gibſ. Cod. p. 682.*

Horses kept for sale, and are sold; or if they be the horses for sale, horses of travellers, or others taken in as guest-horses, it is agreed that *tythe of agistment* is due, because a profit arises from them. *Vide Gibſ. Cod. p. 682. 1 Roll. Abr. p. 647. 1 Bulſtr. 171. Hard. 95. Popb. 142.*

Saddle-horses shall pay no tythes no more than cattle Saddle-horses. for the plough and pail, or cattle killed for the use of a man's own family, in respect of the profit that otherwise accrues to the parson from these. *Vide Bunt. p. 3.*

Of common right no tythe ought to be paid of houses Houses, of habitation, because they do not grow and renew by the year; but though no tythe is payable *de jure*, yet, if time out of mind a *modus decimandi* hath been paid for houses, it may be recovered in the ecclesiastical court in the nature of tythe; and the law will suppose that it was originally in lieu of the tythes of the land upon which the houses are built. *Vide Gibſ. Cod. p. 682. 11 Rep. 16. a. Hob. 10.*

Lambs are deemed a mixed small tythe, and so determined in many cases in the Exchequer. *Vide Gibſ. Cod. p. 682. Popb. 144. Palm. 219.*

Where the number is under ten, it is the same with house lambs are the manner of tything calves in the like case, which tythed. see under that head; and if the parson insists upon it that he will wait till next year, that they may come up to the tytheable number; or if the lambs belonging to the several owners are put together, to be tythed jointly, in both cases *prohibition* will lie: in the first case, because it is against the nature of tythe by the common law, which is annual; and in the second, because it is a custom against reason; for by that means it may fall out that some one may have but one lamb,

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and that be taken for tythe; and he that had more should pay nothing at all. *Vide Gibs. Cod. p. 682. 3 Cro. p. 403. Hob. p. 529.*

In the case of *Selby v. Clerk*, held by *Holt, chief justice*, that the *tenth lamb* is due to the parson by *common right*; and though they make distribution in the *ecclesiastical courts*, that is only among the parsons themselves, with relation to places of their feeding throughout the year, but does not concern the proprietor of the land, who ought to pay the *tenth lamb* to the parson by *common law*. But this, when paid, could be no foundation of a claim by way of *modus*, to be discharged of all tythes of the lambs there fed, on which the pretence for a *modus* was founded. *Vide Lord Raym. p. 677.*

Lead.

Is one of the things which my *Lord Coke* exempts from tythe, as of the substance of the earth, and not annual; and therefore where tythe is claimed it must be upon the foot of *custom*. *Vide 2 Inst. p. 651. Gibs. Cod. p. 682.*

Lime.

Is one of the things exempted from tythe on the same ground as lead. *Vide 1 Roll. Abr. p. 642. 2 Keb. p. 596.*

Loppings of trees.

It is agreed by all, that *timber-trees* of the age of *twenty years*, or *above*, shall not pay *tythe of loppings*; (no, not if they be cut every *ten* or *twelve years*;) but it hath been made a question, whether such branches, if the trees are lopped *before twenty years*, shall not always pay for *loppings after twenty years*, inasmuch as at the *first lopping* the tree was not privileged. *Vide Gibs. Cod. p. 682—683. 2 Cro. 101. Mod. 762—908.*

Madder.

By *stat. 31 Geo. 2. cap. 12. sect. 1.* “ Every person who shall plant, raise, or cultivate any madder in any parish or place within England, shall pay to every parson, vicar, curate, or impropriator of such parish, &c. five shillings and no more, yearly, for each acre of madder so planted, and proportionably for more or less ground so planted in lieu of all tythe of madder; “ for

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“ for the recovery of which sums the parson, &c. shall
“ have the usual remedy.”

Sect. 2. “ No madder shall be carried off the ground
“ on which it grows, before the money directed to be
“ taken in lieu of tythes be paid to the person intitled.”

Sect. 3. “ This act shall not extend to charge any
“ lands discharged by any *modus decimandi*, ancient
“ composition, or other discharge of tythes by law.”

Sect. 4. “ This act shall be in force for fourteen
“ years, and from thence to the end of the then next
“ session of parliament.”

By Stat. 5 Geo. 3. c. 18. “ Whereas an act made in
“ the thirty-first year of his late Majesty King George
“ the Second, intitled, *An Act to encourage the growth*
“ *or cultivation of madder in that part of Great Britain*
“ *called England*, by ascertaining the tythe thereof, was
“ to continue in force from the first day of August,
“ one thousand seven hundred and fifty-eight, for the
“ space of fourteen years, and from thence to the end of
“ the then next session of parliament: And whereas the
“ cultivation of madder, from the setting to its being
“ fit for use, requires so long a time, and the buildings,
“ mills, and other requisites necessary to be provided
“ and maintained for manufacturing it, are so expen-
“ sive, that many people may be unwilling to begin
“ the culture of it during the subsisting term of the
“ said act: And whereas the price of foreign madder is
“ of late greatly raised, and the same does not come
“ into the consumers hands so good as it may be
“ manufactured here; be it therefore enacted, &c.
“ that the said act shall be, and the same is hereby
“ declared to be further continued from the expira-
“ tion thereof, for and during the further term of
“ fourteen years, and to the end of the then next ses-
“ sion of parliament.”

Tythe of *maple* shall be paid, although it be of *twenty* *Maple.*
years growth and more. *Vide Gibs. Cod. p. 683. 2 Cro.*

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Sir

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Mall.

Sir Simon Degge observes, that *tythes of crabs, mafh, &c.* is to be paid when the same are gathered, or satisfaction is to be given if eaten with swine on the ground. *Vide Gibs. Cod. p. 683.*

Manner of paying tythe of milk.

On *tythe-milk*, three things are inquirable: *First*; To whom? And that is, to the parson in whose parish the cows yielding milk are depaftured for the time; *Second*; In what manner? and that shall be, not by the tenth part of every meal, but by every tenth meal entire; *Third*; At what place? and that was adjudged to be the *church-porch*, whither it shall be brought by the parishioner, *Declared per curiam*, that of common right *tythe-milk* is payable at the *parsonage* or *vicarage-house*. *Vide Gibs. Cod. p. 683. Raym. (S. T.) p. 277. Lord Raym. p. 129.*

Milk of goats and ewes.

The same rules that take place as to the *milk of cows* do, by parity of reason, and according to the laws of the church, hold in the *milk of goats and ewes*, where it is preserved. *Vide Gibs. Cod. p. 683.*

In the case of *Dodson v. Oliver*, decreed, that if there be any *custom* in a parish for the manner of *tything-milk*, as to carry it to the *church-porch*, or *parsonage-house*, that must be observed by the parishioner; but if there be no particular custom or usage, the parishioner is obliged *de jure* to pay every tenth meal, to milk the cows at the usual place of milking into his own pails; and the parson is obliged to fetch it away from the milking-place in his own pails, in a reasonable time; and if he doth not fetch it before the next milking-time, the parishioner may justify pouring the milk upon the ground, because he hath occasion for his own pails. Determined by the whole court of *Exchequer* in this case, that the milk ought not to be carried either to the *church-porch*, or to the *parson's house*, and that it ought to be fetched by the parson. *Vide Bunk, p. 73.*

Mills.

Mills are of two sorts, either *corn-mills*, or *mills for other uses*, as *paper-mills*, *fulling-mills*, and the like. *Corn-mills* have been commonly thought to yield a *pre-*

dial

dial tythe, viz the tenth toll-dish, from its belonging to the incumbent where the mill stands, and not where the miller dwells; according to the known distinction, that predial tythes are payable where they arise; personal where the person hears divine service, and receives the sacrament; as was argued by my Lord Chief Justice Holt, 3 W. & M. in the case of *Gumley v. Falkingham*, contrary to the suggestion of *Coke* in his commentary upon *articuli cleri*, cap. 5. where he speaks of some who would have the tythe of corn-mills to be personal, as well as the tythe of other mills; and it hath been so adjudged in the House of Lords to be a personal tythe, contrary to the determination of *Lyndwood*. *Vide* *Gibb. Cod. 683. Show. 281. Cartb. 215. 2 Inst. p. 671.*

It was determined by the House of Lords, that mills are tytheable, but that the same is a personal tythe, and so ought to be paid out of the clear gain, after all manner of charges and expences are deducted. *Vide* *2 P. Will. p. 463.*

The canonists hold, that this is a predial tythe, and Wind-mills, that the tenth toll-dish ought to be paid for the same, without deduction of expences: but this doth not agree with the common law, and therefore is not binding. *Vide* *Degge, p. 2. s. 9.*

By *statute 9 Edw. 2. stat. 1. c. 5.* "If any do erect in his ground a mill of new, and afterwards the parson of the same place demandeth the tythe for the same, the King's prohibition shall not lie."

It hath been resolved, that fulling-mills, tin-mills, lead-mills, plate-mills, and the like, are not within this statute, nor is tythe due of such otherwise than by custom. *Vide* *Gibb. Cod. p. 166.*

Fulling-mills,
tin-mills, lead-
mills, and plate-
mills.

Note. "Mills, where their first erection is not known, the rule of their discharge seems to be, that all such mills whose first erection was before time of memory, and is not otherwise known by matter of record, and have not been subject to the payment of tythes, shall be intended to be erected

“ before the statute, and so to be tythe free. But as
 “ to mills for which tythes hath been paid, and new
 “ mills, tythes must be paid for them.” *Vide Bunt.*
p. 133.

Where there is a *modus* in lieu of all tythes issuing out of a messuage, and an *ancient* water-mill for corn, and a new water-mill for corn is erected within the said messuage, if the stream on which the *ancient* mill stood is diverted by the owner, (*and not by the act of God*) and a new mill erected upon the new stream, they shall not be discharged by virtue of any *former modus*. *Vide 1 Roll. Abr. p. 641.*

Where there hath been an *ancient* corn-mill, for which a *modus* hath been paid for time *immemorial*, and afterwards, by continuance of time, the mill-stream changes its course, and goes in a place a little distant from the *ancient* stream, and thereupon the owner of the mill pulls it down, and rebuilds it in the new place where the stream now runs, this shall be discharged of tythes by force of the *ancient modus*; for this comes by the *act of God*, and not by the *act of the party*. *Vide 1 Roll. Abr. p. 641.*

Nurseries.

On these two questions arise; *First*; Whether they shall pay tythe? And though it was urged that they are of the nature of the land, and so are privileged, yet the whole court was of opinion, that inasmuch as the owner dug them up, and made profit of them, and sold them in another parish, tythe should be paid of them, *Secondly*; By whom the tythe shall be paid? Which question was resolved by the court in the case of *Grant v. Kedding*, *viz.* if the owner sells them, and pulls them up himself, he shall pay the tythes; but if he sell them particularly to another, the vendee shall pay the tythes. *Vide Gibs. Cod. p. 683, 684. 3 Cro. p. 526, Jones W. p. 416. Hard. p. 380.*

Oak.

This, together with *ash* and *elm*, are privileged from paying tythe by the *statute of sylva cædua*, as timber, being of or above the growth of *twenty years*: it hath been resolved, that *oak* under *twenty years*, being fit for timber in time to come, shall not pay tythe; and that though

though it stands till it is rotten, and unfit not only for timber, but for all manner of uses except the fire, it shall be privileged, because it hath been once privileged.

Decreed, that *Easter offerings* were due of *common Easter offerings*, right at two-pence per head, unless it be customary to pay more. *Vide Bubn.* p. 173, 174.

If the soil of an *orchard* be sown with any kind of *Orchards*, grain, the parson shall have tythe of the *fruit-trees*, and of the grain, for they be of several and distinct kinds.

These being employed in hurdles for sheep, no tythe *Others*, shall be paid of them. *Vide 2 Keb.* p. 635.

All the *books* are clear, that if the *modus* was a *cer-* *Parks*, *tain* *consideration* in *money* for all the *tythes* of such a *park*, such *modus* shall hold, notwithstanding it be *dis-* *parked*. But if the *modus* was for the *deer* and *herbage* of such a *park*, the *modus* is gone upon such *park* being *disparked*. *Vide Gibs. Cod.* p. 684. *Mod.* p. 909. *3 Cro.* p. 467. *2 Bulst.* p. 240.

The same *doctrine* holds, if the *modus* had been to pay a *buck* and a *doe* for all *tythes* of such a *park*, and the *park* is *disparked*, the *modus* shall continue, and the *owner* may give a *buck* and a *doe* out of another *park*; but if it was to pay the *shoulder* of *every deer*, or expressly a *buck* or a *doe* out of the same *park*, the *modus* is gone. *Vide Gibs. Cod.* p. 684. *Noy*, 34. *Mod.* p. 909.

No *tythe* shall be paid of the *eggs* or *young* of *par-* *Partridge*, *tridges* and *pheasants*, because they are *feræ naturæ*; and though they be made tame, or be kept in a place inclosed, (their wings being clipped) and there lay *eggs*, and hatch *young ones*, yet this is held not to alter the case. *Vide Gibs. Cod.* p. 684. *1 Roll. Abr.* p. 636.

Held, that if one gather *green pease* to be eat in his *Pease*, house, no *tythe* shall be paid of them; but if gathered for sale, or to feed hogs, they become subject to *tythe*. *Vide Gibs. Cod.* p. 684. *1 Roll. Abr.* p. 647.

Pay

Pheasants.

Pay no tythes. *Vide Gibs. Cod. p. 684. Mar. p. 26.*

Pigeons.

No tythe due for pigeons spent in the house, but are subject to tythe if sold. *Vide Gibs. Cod. p. 684. 1 Roll. Abr. p. 644. 2 Roll. Rep. 2.*

Note. "The same doctrine holds as to pigeons which are in holes about a house, and increase there." *Vide Gibs. Cod. p. 684.*

Rakings.

No tythe is due *de jure*, being left for the poor, (as was directed in the law of Moses) and being also the remains of corn, for which tythe has been paid; but this is to be understood only of rakings, which have been *minus voluntarie dispersæ*. *Vide Gibs. Cod. p. 684. Litt. p. 35. 1 Cro. p. 475. 1 Roll. Abr. p. 645.*

Rape-seed.

This is deemed a *small tythe*, and it is usual for the occupier of the land to agree with the owner of the tythe for the tythe of rape-seed at so much an acre. *Vide 2 Burn. E. L. p. 406.*

Roots.

Held, that if a man cut *coppice wood*, and pay tythe of it, and before any new branches sprung out, grub up the roots and stubbs of the wood, he should not pay tythe of them, because they are *parcel of the frank tenement*, and do not renew annually. *Vide Gibs. Cod. p. 684.*

Saffron.

Is a *predial small tythe*; for where the parson had the *great tythes*, and the vicar the *small*, and a land which had been sown with *corn* was sown with *saffron*, the tythe was adjudged to the *vicar* as a *small tythe*, notwithstanding *statute 2 Edw. 6. c. 13.* that tythes shall be paid in such manner as they have been for forty years past. *Vide Gibs. Cod. p. 685. Mod. 909. Ow. 74.*

Salt.

Not tytheable but by *custom* only. *Vide Gibs. Cod. p. 685.*

Tares.

Held, that *tares*, whether *green* or *ripe*, are a *great tythe*, and belonged to the *rector*; if given to cattle of *husbandry*, not subject to tythe. *Vide Burn. p. 279.*
A pre-

A *prescription* may be within a parish that, by reason *Prescription.*
 they have not sufficient meadow for *milch-kine* and
draught-cattle, they have used to cut some of their
tares green, and give them to the aforesaid stock, and to
 be discharged of *tythes* for the same: and this is a *good*
custom, on consideration for that the parson hath an
 advantage thereby as well as the parishioner, *namely*,
 in the *tythe-milk*, and manuring of the *other corn land*;
 and the matter is, the want of meadow and pasture;
 and the surmise is, that if it had been said, that for
 want of meadow and pasture they have used to eat
 their meadows with their plough cattle, and for so
 much as they did eat to pay no *tythes*. *Vide Wats. c.*

49. *Bunb. p. 279.*

The same if a man, according to the custom of the
 country, doth sow his land to feed his *horses for tillage*.
 and the use hath been to suffer the horses to be fed upon
 the land, without any mowing of the grain, the par-
 son shall not have any *tythes* thereof, because it is no
 more than *pasture for his horses*. *Vide Wats. c. 49.*

Not *tytheable*, being of the substance of the earth, *Tiles*.
 and not annual. *Vide 2 Inst. p. 651.*

By a constitution of *Archbishop Winchelsea*, *tythes Trees*,
 shall be paid of trees if they be sold; which *Lyndwood*
 explains of *large trees* which do bear fruit, and being
 cut down, are not fit for timber, but are used for
 fuel. *Vide Lynd. p. 200.*

By *Statute 45 Edw. 3. c. 3.* it is enacted as followeth:
 " As the complaint of the great men and the com-
 " mons, shewing by their petition, that whereas they
 " sell their great wood of the age of *twenty years*, or
 " of greater age, to merchants, to their own profit, or
 " in aid of the King in his wars, parsons and vicars of
 " *holy church* do implead and draw the said merchants
 " in the *spiritual court* for the *tythes* of the said wood,
 " in the name of this word called *sylva cædua*, whereby
 " they cannot sell their woods to the very value, to the
 " great damage of them and of the realm; it is ordained
 " and established, that a *prohibition* in this case shall be
 granted,

“ granted, and upon the same an attachment, as it
“ hath been used before his time.”

Note. “ The wood intended in this statute is such
“ as is fit for building of houses and ships, and there-
“ fore without doubt it comprehends oak, elm, and
“ ash; but it hath also been adjudged to include beech,
“ as timber in Buckinghamshire, and some other coun-
“ ties, where better timber is not to be had, or is very
“ scarce. And those trees are free, not only as to
“ the trunk or timber, but also as to the bark, root,
“ and germins that grew upon the ancient stock; and
“ it is not material how often or how seldom the
“ branches thereof are lopped, because being once free,
“ they are always free. *Vide 2 Inst. p. 643.*

Oak.

Oak under twenty years, being fit for timber in time
to come, shall not pay tythe; and that though it stands
till it is rotten, and unfit not only for timber, but for all
manner of uses except the fire, it shall be privileged
upon this general *maxim*, that once discharged and
always discharged. *Vide 1 Roll. Abr. p. 640.*

Timber-trees.

Timber-trees above twenty years growth, cut and corded
for fuel, and the bark stripped from the same, *adjudged*
to pay tythes as well as *underwood*; but that no tythe
was due for such wood above *twenty years growth*, nor
of the bark thereof, which was not corded. *Vide*
Bunb. p. 98.

Turf.

Tythe-free, as part of the freehold. *Vide Gibs. Cod. p.*
685. 1 Mod. Rep. p. 35. 2 Inst. p. 651.

Turkies.

In the case of *Carlton v. Brightwell*, it was holden by
the *Master of the Rolls*, that *turkies* are birds as tame as
hens or other poultry, and therefore *must* pay tythes.
And also that if tythes be *once* paid of *eggs*, there can be
no demand made a *second time* in respect of the *chicken*
hatched afterwards. *Vide 2 P. Will. p. 462.*

Turnips.

Held, that where land is sown with *turnips* after the
corn is cleared, and fed with sheep and barren cattle,
that tythe shall be paid of such *turnips*; though it was
insisted

insisted upon, that the soil in that county (Staffordshire) was *dry* and *sandy*, and that this method of husbandry improved the land, so that the parson had *überiores decimas* of corn, and had received the tythe of *lambs* and *wool* of the *sheep* so fed before; but the court overruled this defence, and said it amounted to a *non decimando* as to tythes. *Vide Bunb.* p. 314.

By *statute 2 Edw. 6. c. 13. sect. 3.* the tythe of *Wastes tytheable* cattle feeding on large wastes, where the parish is uncertain, shall pay tythe to the incumbent of that parish in which the owner of the cattle dwells, unless limited otherwise by *custom* or *prescription*.

Are not tytheable if growing about a house, though *Willows*. it is waste to fell them, yet being felled, tythe shall be paid of them. *Vide Gibs. Cod. p. 685. Hob. p. 210.*

Growing in the nature of an *herb*, the tythe thereof *Woad*. is a *small tythe*. *Vide 3 Cro. p. 28. Heil. p. 77.*

According to the *common opinion*, *wood* passes for a *Wood, great tythe*; that in controversies between *parson* and *vicar*, where the endowment is lost, this point is determined by *prescription*; and in case the endowment remains, and doth not expressly mention wood, and yet that tythe hath been usually taken by the *vicar*, the law will, by favourable construction, either graft it upon some general expression in the endowment, or else presume that there might be a subsequent augmentation of the endowment of the *vicar*, by which he became entitled to *tythe-wood*. *Vide Gibs. Cod. p. 686.*

That wood is a *predial tythe*, is plain, but whether *whether a great or small tythe*. *great* or *small*, hath been a question between the *parsons* and *vicars*; and it hath been resolved, that if a *vicar* be only endowed with the *small tythes*, and have, by reason thereof, always had *tythe wood*, in such case it shall be accounted a *small tythe*, otherwise it is to be accounted amongst the *great tythes*. But this doth not alter the quality of the tythe; and the *vicar's* having received it may be evidence of a grant thereof having

ing been made subsequent to the endowment, although such original grant is now lost, but is not evidence that wood in itself is a *small tythe*. *Vide Degge*, p. 2.

c. 1.

How wood may be discharged from tythes.

First; With regard to the age; *timber-trees*, of or above *twenty years growth*, are discharged by the statute of *sylva cædua*; *Secondly*; With regard to the use it is put to; *wood* for the owner's firing, hedging and fencing of the premises within the same parish, hath been *adjudged tythe-free*; but this is to be alleged, not absolutely, that *per legem terræ* wood so applied shall not pay tythe, but *sub modo*, that the parson hath some consideration for it, or at least that the house is for maintenance of husbandry, by reason of which the parson hath *überiores decimas*. *Vide 3 Cro. p. 113. Mod. 683. Litt. 52. Keb. 319. Palm. 37. Hetl. 110.*

Manner of tything wood.

In divers places they fell out the *tenth acre of wood* standing; and so it may be by the *pole* or *perch*, or by the *tenth faggot* or *billet*, according as the *custom* of the place hath been. *Vide Hob. 350.*

Wool.

There is no dispute concerning the kind of tythe which *wool* yields, for it is agreed by all to be a *mixed small tythe*. Nor is there any doubt but that it is *de jure* tytheable: however, for the bodies of sheep killed, and spent in the house, no tythe shall be paid, yet the *wool* shall pay tythe. *Vide 1 Roll. Abr. p. 646, 647. 3 Bulst. p. 242. Mod. p. 911.*

If there be under *ten pounds of wool*, a reasonable consideration shall be paid; because being due *de jure*, a *modus in non decimando* cannot be allowed in any case. *Vide 1 Roll. Abr. p. 687.*

The strict right of *tythe-wool* hath been limited by an allowance of the two following *moduses* as good, viz. *First*; The *tenth* part of the *wool* of all the sheep which he had before *Lady-day*, in satisfaction of all the *wool* of such sheep as should be brought into the parish after *Lady-day*; *Secondly*; To be discharged of tythe of those he should sell but *two days* before the *shearing*, in

in consideration that time out of mind he hath paid
tythe-wool of those which he bought but *two days* before
the shearing. *Vide Gibs. Cod. p. 687.*

As to the time of paying *tythe-wool de jure*, it is due
when clipped; but by *prescription* it may be set out all
together at another time; and when the *spiritual* court
disallowed this plea, they were *prohibited*. *Vide 1 Cro.*
p. 702. Mod. p. 910.

C H A P. V.

The manner of setting out, and taking and carrying away tythes, as settled by the common statute and ecclesiastical law.

How tythes are
to be set out.

A PERSON is bound, of *common right*, to cut down, and set out the tythes of his land: for example, a parson made a collector of tythes, and that collector licensed a parishioner to carry away his corn without setting forth of tythes, and determined a *void* license. The laws of the church entitles the parson to have notice given him; the *common law* considers such notice as not necessary. The furthest they have gone is to declare a custom of tything without view an absurd custom; and statute 2 *Edw. 6. cap. 13. sect. 2.* entitles a parson, though not to notice, to a right of seeing it set out. *Vide Gibs. Cod. p. 688. Noy, 134. 1 Roll. Abr. 643. 2 Vent. 48.*

When they are
to be set out.

The time and manner of setting out tythes (*i. e.* whether it is to be done when the things are in sheaves or cocks, or shocks) depends on the particular custom of the place. The *common law* declares, that of *common right* the owner is obliged to do no more, in order to the tything of corn, than to bind it up in sheaves. It being a *maxim*, that every *modus* must be something for the advantage of the parson, which the owner is not bound to do, the setting into cocks or shocks hath been offered as the foundation of a *modus*, when no other pretence could be found; and particularly adjudged a good consideration for not tything the odd sheaves under the number of *ten*. There are no *ancient* testimonies to make the tything in sheaves the *common law* of tything. *Lyndwood* (who usually distinguishes between what is due *de jure communis* and what *de consuetudine*) sets all the method of tything upon the same foot of custom. *Vide Gibs. Cod. p. 688, 689. See 2 Leon. 70. Latch. 125. Palm. 440. 2 Keb. 36. Siderf. 280.*

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The tenth land of corn, (instead of the tenth sheaf or shock) beginning with that land which is highest to the church, hath been adjudged a good custom; notwithstanding it was alleged, that the occupiers, knowing which would fall to the share of the parson, did not till, manure or sow it as they did the rest; for this fraud (they said) might be remedied by an action at common law. Might not the custom as well be declared a custom against reason, when the presumption is so strong, that in such case the occupier will not bestow equal care upon it as upon his own, and when it is so difficult to state the degrees of care taken or required; and since, if due care be not taken, no remedy is left but what is worse than the disease? *Vide Gibs. Cod. p. 689. Mo. p. 913.*

It is reported to have been determined in the *Common Pleas*, that by the civil law the parson ought to have his tythe by the tenth ridge. The maxims of civil and canon law are not usually over-valued in our temporal courts; but the use which was made of this was, that the reaping, binding, and shocking, being (in consequence of that doctrine) more than the owner was bound to do, these should become a good modus to discharge him of tythe for the hay growing in the head-lands. *Vide Gibs. Cod. p. 689. 2 Leon. 70. non W*

Tythes being set out, or severed from the nine parts, become lay chattels. So held on this foundation, when the tythe of corn was set out in sheaves, and the parson would not take it, but prayed remedy in the spiritual court, a prohibition was granted; and when a sequestration was prayed in the temporal courts of tythes not set out, the right of which was in controversy, the party was told his request had been reasonable, if they had been severed from the nine parts. On the same principle, if after severance they are carried away by a stranger, the remedy is in the temporal courts; and though it is otherwise, if carried away by the owner, because his setting them out in order to carry them away, is deemed a fraudulent setting out. *Vide Gibs. Cod. p. 689. 2 Leon. 201. 6 Sanc. 71. 2 G. 607. Noy. 44. Mo. 502. 2 Roll. 440.*

On whom the
care of tythes
fall when set out

After severance it rests upon the parson, and not upon the owner of the land. It was determined in the case of *Dr. Bridgman*, that though the parishioner ought *de jure* to reap the corn, he is not bound to guard the tythes of the parson; on the contrary, if the parson does not carry them away in convenient time, an action on the case lies against him. But so, that the parishioner may neither bring such action, nor put in his cattle, till he hath given notice to the parson that they are set out. If tythes be spoiled, and the parson seeks remedy in the *spiritual court*, and a prohibition is obtained upon *false* suggestions, a consultation is provided in the Register. *Vide Gibs. Cod.* p. 689. *Noy.* 31.

On a case where the occupier, after severance, took the *nine parts*, and turned his cattle into the meadows where the tythes were, which destroyed and consumed the tythes, *Holt, Chief Justice*, said, that though there was no obligation to give notice of the severance, yet he thought the turning of cattle to the tythe made it a *fraudulent* severance, and that a suit might be maintained for it in the *spiritual court*. *Vide Comyns*, p. 22.

When tythes
set out, par-
son may spread
and dry them.

When the tythes are set forth, the parson may of *common right* come himself, or his servants, and spread abroad, dry and stack his corn, hay, or the like, in any convenient place or places upon the ground where the same grew, till it be sufficiently weathered, and fit to be carried into the barn. He must not take a longer time for the doing thereof than what is convenient and necessary, and what shall be deemed a convenient and necessary time; though the law doth not, nor can define, what is convenient and necessary time; for the quantity of the corn or hay, and the weather must determine that; and what shall in this, and all other cases of the like nature, be said to be a reasonable and convenient time, is to be determined by the *jury*, if the point come in issue before a *jury*: if on a *demurrer*, or other matter of law, the court where the same is tried are to determine it. *Vide Degge*, p. 2. c. 14. *Str. 245.*

By

By statute 2 and 3 Edw. 6. c. 13. sect. 2. "If any person carry away his corn or hay, or his other predial tythes, before the tythe thereof be set forth; or willingly withdraw his tythes of the same, or of such other things whereof predial tythes ought to be paid; and if any person do stop, or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take, and carry away their tythes, as is abovesaid, he shall forfeit double value, with costs, to be recovered in the ecclesiastical court."

The parson has a right to carry away his tythes; if he be obstructed, he shall have a remedy in the spiritual court. The 8th Jac. I. a consultation was granted on this point, and adjudged a fraudulent setting out; which, tho' possibly a good reason, seems not to be a true one, but to be used on purpose to save the maxim, of tythes being a *lay-chattel* after setting out; since (without the help of that distinction) stat. 2 Ed. 6. c. 13. sect. 2. doth in express words give remedy before the spiritual judge, in case the parson is stopped in carrying away his tythes; on which it was resolved, (43 Eliz. in Blackwell's case) that the question being in the spiritual court, whether the gate was locked, or open, no prohibition should be granted. *Vide Gibs. Cod. p. 689. 1 Cro. 844.*

As to a convenient time for the parson to carry away his tythes.

The parson may carry his tythes from the ground where they grew, either by the common way, or any such way as the owner of the land used to carry away his *nine parts*. Where there are more ways than one, and the question is, which is the right way, this is cognizable in the temporal court. *Vide Deg. p. 2. c. 14.*

If the owner of the soil, after he hath duly set forth his tythes, will stop up the ways, and not suffer the parson to carry away his tythes, or to spread, dry, and stack them on the land, this is no good setting forth of his tythes without fraud, within the statute: and the parson may have an action on the said statute, and may recover the *treble value*; or may have an action on the case for such disturbance; or he may, if he will, break open the gate or fence which hinders him, and carry away his tythes. *Vide Degge, p. 2. c. 14.*

If this step becomes necessary, he must be cautious that he commit no riot, nor break any gate, rails, lock or hedges, more than necessarily he must for his passage. *Vide Degge, p. 2. c. 24.*

When he comes with his carts, teams, or other carriages, to carry away his tythes, he must not suffer his horses or oxen to eat and depasture the grass growing in the grounds where the tythes arise, much less the corn there growing or cut: but if his cattle (as cannot be avoided) do in their passage, against the will of their driver, snatch some of the grass, this is excusable. *Vide Deg. p. 2. c. 14.*

The remedy
where tythes re-
main too long
after set out.

If tythes after set out remain too long on the land, the owner of the soil may take them *damage feasant*; if he be sued for them, in order to justify, he must set forth how long they had remained before he took them; and when they shall be said to remain too long, is triable by the jury. *Vide Wats. c. 54.*

An action on the case will lie against the parson for his negligence in this behalf; but no action in such case will lie, unless the parishioner has duly set forth his tythes, and hath also given notice to the parson that they are so set forth. *Vide Deg. p. 2. c. 14.* *Lord Raym. p. 187.*

Burns Peckitt - But the Occupier of the Ground
astical Law - cannot put in his Cattle and destroy
P. 407 - the Corn or other Tythes, for that is to
113. make himself a Judge what shall
be deemed a convenient Time for
taking it away: but the Burth and
100 g. Jury upon an action brought are to
Shapscott determine of the Reasonableness of the
Mugford. Time, and of the Remonstrance to be
made for the injury sustained

*Vide South v Jones. St. 245, 266. 267
CHAP.*

C H A P. VI.

The several remedies to be taken for recovery of Tythes by the common statute and ecclesiastical law.

IN old times tythes were recoverable in the *county*. Where tythes court, where the bishop or his deputy, and the ^{were recoverable} sheriff, did sit as co-ordinate judges, there being at ^{in old times.} that time no separate court of ordinary ecclesiastical jurisdiction. *Vide 2 Inst. 661.*

By a constitution of Archbishop *Winchelsea*. “ For- When recovera-
“asmuch as many are found, who are not willing ble in the eccl-
“freely to pay their tythes, we do ordain that the e-
“parishioners be admonished once, twice, and thrice, clastical courts,
“to pay their tythes to God and the church; and if
“they do not amend, they shall first be suspended from
“the entrance of the church, and so at last be com-
“pelled to pay their tythes by censures ecclesiastical, if
“it shall be necessary: and if they shall desire a relax-
“ation or absolution of the said suspension, they shall
“be remitted to the ordinary of the place, to be ab-
“solved and punished in due manner.” *Vide Lind.*
191.

By the statute of *circumspecte agatis*, 13 Edw. I. 13 Ed. 1. sect. 4.
“stat. 4. The King to his judges sendeth greeting;
“use yourselves circumspectly in all matters concern-
“ing the clergy, not punishing them if they hold plea
“in court christian, in the case where a parson doth
“demand of his parishioners oblations or tythes due
“and accustomed; in which case the spiritual judge
“shall have power to take knowledge, notwithstanding-
“ing the King’s prohibition.”

Accustomed.] By this act, *modus decimandi* and *real composition* are established; for hereby are tythes di-
vided into two parts; in *decimas debitas*, and that is,
quota pars, the tenth part; and into *decimas consuetas*,
which are due by *custom* and *usage* in satisfaction for
tythes; for which satisfaction, or *modus decimandi*, the

parson may sue in *court christian*, and is warranted by this act: for the rule is, that the *modus* is to be sued for in the *ecclesiastical court*, as well as the very tythe; and if it be allowed between the parties, they shall proceed there; but if the custom be denied, it must be tried at the *common law*; and if it be found for custom, then a consultation must go; otherwise, the prohibition stands. The like is affirmed in case a jury, upon an issue joined in a prohibition on a *modus decimandi* find a different *modus*; since a *modus* is found, they shall not have consultation. *Vide Gibs. Cod. 691. cites Hob. 247. Noy, 81. Hert. 133. 1 Vent. 32.*

The ground why the courts of *common law* prohibits the *spiritual Courts* from trying of *moduses* are, that whereas every *modus* is less than the real value, the rule of the *common law* is, that less than the real value shall not be taken, and that a custom to the contrary is void; and that the *ecclesiastical* and *temporal* laws differ in the times of limitations; *forty years* making a good custom with the *first*; whereas, by the *second*, it must be beyond the time of memory. *Vide Gibs. Cod. p. 691.*

It has been held, that though the general rule of the *common law* is not to admit less than the real value, yet there are several exceptions, as in cases of *personal*, and *small tythe*; in which customary payments are allowed, without breach of conscience; the *spiritual courts* have commonly allowed pleas of *modus decimandi*, and are ready to allow them; that the *averment* in the prohibition is not that they do take cognizance, but that the plea hath been offered and refused; which supposes, that if the plea be admitted, the prohibition ought not to go; that accordingly it hath been affirmed by *Doderidge and others*, that they may as well try the *modus* as the right of tythes, and that prohibition is not to be granted till the *spiritual court* either refuse to admit the plea, or proceed to try it by methods different from the rule of the *temporal law*, as to the time of limitation, or number of witnesses, or the like. *Lord Coke* contended for the contrary doctrine; it was declared by *Keling and Twisden*, 20 *Car. 2.* in the case of *the*

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the Bishop of Lincoln against Smith, that in case one libel for a *modus decimandi*, if the spiritual court allow the plea they may try it; and Coke's opinion against trying pensions claimed by *prescription* in the spiritual court, they said, was not warranted by the books. *Vide Gibs. Cod. 691. Still. Eccles. Cas. p. 311.*

By statute of *Articuli Cleri*, 9 Edw. 2. stat. 1. c. 1. Stat. 9 Edw. 2.
" Whereas laymen do purchase prohibitions generally
" upon tythes, obventions, oblations, mortuaries;
" the King doth answer to this article, that in tythes,
" oblations, obventions, mortuaries, (when they are
" propounded under these names) the King's prohibi-
" tion shall hold no place, although for the long with-
" holding of the same the money may be esteemed a
" sum certain. But if a clerk, or a religious man, do
" sell his tythes, being gathered in his barn, or other-
" wise, to any man for money, if the money be de-
" manded before a spiritual judge, the King's prohibi-
" tion shall lie; for by the sale the spiritual goods are
" made temporal, and the tythes turned into chattels."

By statute 18 Edw. 3. stat. 3. cap. 7. " Whereas Stat. 18 Edw. 3.
" writs of *scire facias* have been granted to warn
" prelates, religious, and other clerks, to answer
" *dismes* in our chancery, and to shew if they have any
" thing, or can any thing say, wherefore such *dismes*
" ought not to be restored to the said demandants,
" and to answer as well to us as to the party, to such
" *dismes*; such writs from henceforth shall not be
" granted, and the process hanging on such writs shall
" be annulled and repealed, and the parties dismissed
" from the secular judges of such manner of pleas."

Writs of scire facias.] This is a writ where one hath recovered debts or damages in the King's courts, and sues not for execution within a *year and a day*; after which he shall have this writ to warn the party; who, coming not, or saying nothing to stay execution, a writ of *fieri facias* goes, commanding the sheriff to levy the debts or damage, of his goods. *Vide Terms of the Law, head Scire and Fieri facias.*

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To warn prelates, religious, and other clerks.] This *scire facias* was not brought against the possessors of the land for subtraction of tythes, but against the prelates or other clerks, which took the tythes after they were severed. Commissions out of the *Chancery* were directed to certain persons, giving them authority to inquire whether such a *spiritual* person ought to have tythes of such lands; whereupon inquisitions were taken and returned: and if it were found for the *spiritual* person, upon this record, he might have a *scire facias* against any prelate, religious, or other clerk, that took them after severance. *Vide 2 Inst. p. 640.*

2 Rich. 2. c. 13. By *Stat. 1 Rich. 2. c. 13.* " The prelates and clergy of this realm do greatly complain them, for that the people of holy church, pursuing in the *spiritual* court for their tythes and their other things, which of right ought, and of old times were wont to pertain to the same *spiritual* court; and that the judges of the holy church having cognizance in such causes, and other persons thereof meddling according to the law, be maliciously and unduly for this cause indicted, imprisoned, and by the secular power horribly oppressed, and also inforced with violence, by oaths and grievous obligations; and many other means unduly compelled to desist and cease utterly of the things aforesaid, against the liberties and franchises of holy church: wherefore it is assented, that all such obligations made or to be made by *dureys* or violence, shall be of no value. And as to those that by malice do procure such indictments, and to be the same indictors, after the same indictees be so acquitted, such procurers shall suffer a year's imprisonment, and restore to the parties their damages, and shall nevertheless make a grievous fine unto the King. And the justices of assize, or other justices, before whom such indictees shall be acquit, shall have power to enquire of such procurers and indictees, and duly to punish them according to their desert."

2 Rich. 2. c. 14. By *Statute 1 Rich. 2. a. 14.* " At what time that any person of the holy church be drawn in plea in the

“ the secular court for his own tythes, taken by the name of goods taken away ; and he which is so drawn in plea makes an exception, or alleges that the substance and suit of the business is only upon tythes due of right, and of possession to his church or other his benefice : In such case, the general averment shall not be taken, without shewing specially how the same was his *lay chattel*.”

By 27 Hen. 8. c. 20. “ When by the noise of the 27 Hen. 8. c. 20. dissolution of monasteries in this parliament, laymen took occasion, upon trifling pretences, to withdraw their tythes, it was enacted as followeth : Forasmuch as divers evil disposed persons inhabited in sundry counties, cities, towns, and places of this realm, having no respect to their duties to Almighty God, but against right and good conscience, having attempted to substract and with-hold in some places the whole, and in some places great part of their tythes and oblations, as well personal as predial, due unto God and holy church ; and pursuing such their detestable enormities and injuries, have attempted in late time past to disobey and contemn the progress, laws, and decrees of the *ecclesiastical courts* of this realm, in more temerarious and large manner than before this time hath been seen : for reformation of which said injuries, and for unity and peace to be preserved amongst the King’s subjects of this realm, our Sovereign Lord the King, being supreme head on earth (under God) of the church of England, willing the *spiritual* rights and duties of that church to be preserved, continued and maintained, hath ordained and enacted by authority of this present parliament, that every of his subjects of this realm, according to the *ecclesiastical* laws and ordinances of his church of England, and after the laudable uses and customs of the parish or other place where he dwells or occupies, shall yield and pay his tythes and offerings, and other duties of holy church ; and that for such subtractions of any the said tythes and offerings, or other duties, the parson, vicar, curate, or other party in that behalf grieved, may, by due process of the King’s *ecclesiastical laws* of

“ of the church of *England*, convene the person offending before his ordinary, or other competent judge of this realm, having authority to hear and determine the right of tythes, as also to compel the same person offending to do and yield his duty in that behalf: and in case the ordinary of the diocese, or his commissary, or the archdeacon, or his official, or any other competent judge aforesaid, for any contempt, contumacy, disobedience, or other misdemeanor of the party defendant, shall make information and request to any of the King’s most honourable council, or to the justices of the peace of the shire where such offender dwells, to assist and aid the same ordinary, commissary, archdeacon, official or judge, to order or reform any such person in any cause before rehearsed; that then he of the King’s said honourable council, or such two justices of the peace, (whereof one to be of the *quorum*) to whom such information or request shall be made, shall have power to attach, or cause to be attached, the person against whom such information or request shall be made, and to commit him to *ward*, there to remain without bail or mainprize, until he shall have found sufficient surety to be bound by recognizance, or otherwise before the King’s said counsellor, or justice of the peace, or any other like counsellor, or justice of the peace, to the use of our said Lord the King, to give due obedience to the process, proceedings, decrees, and sentences of the *ecclesiastical court* of this realm, wherein such suit or matter for the premises shall depend, or be, and that every of the King’s said counsellors, or two justices of the peace, whereof the one to be of the *quorum*, as is aforesaid, shall have power to take and record such recognizance and obligations.”

“ SECT. 2. “ PROVIDED, That this shall not extend to any inhabitant of the city of *London*, concerning any tythe, offering, or other *ecclesiastical* duty; grown and due to be paid within the said city; because there is another order made for the payment of tythes and other duties within the said city.”

SECT.

SECT. 3. " PROVIDED ALSO, That all persons, being parties to any such suit, may have their lawful action, demand or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample manner as they might have had if this act had not been made."

SECT. 1. *Shall have power to attach.*] *Sanchee and others, quakers,* were cited into the ecclesiastical court, to answer there upon their solemn affirmation, &c. concerning tythes withheld by them from the parson of the parish, and for not answering, the commissary, according to *statute of 27 H. 8. cap. 20.* certifies their contumacy to two justices of peace, by whose warrant they were seized, and committed to prison; and being brought by *babeas corpus* into the King's Bench, it was moved, that they might be discharged, because the new act concerning the affirmation of quakers gives the parson a remedy to recover tythes by distress, by virtue of a warrant of a justice of peace: then where a statute gives remedy, the jurisdiction of the *spiritual court* is taken away, unless it be saved by the same statute. *5 Co. 73. 6 Jones, 320.* statutes were cited where the jurisdiction of the *spiritual court* was saved, as *23 Eliz. cap. 1. 1 Eliz. cap. 2.* In the same manner in statute against *usury, 3 Inst. 152. 2 Inst. 657.* and from thence it was inferred, that it was the opinion of those parliaments, that the *spiritual jurisdiction* would have been taken away by these acts, if it had not been saved by them. *Per curiam.* This last act seems to be only an accumulative remedy, and not to repeal the act of *Hen. 8.* In many cases the *common law* and *ecclesiastical courts* have a concurrent jurisdiction; as if a pension be payable out of a parsonage by *prescription*, the remedy for this is either in the *spiritual court*, or *annuity* lies for it at *common law*; tho' *Coke* says the contrary in *2 Inst.* in his *Comment on Statute de circumspetæ agatis.* But where the nature of the offence is altered by a statute, and a new penalty inflicted, then, after the party has been tried at *common law*, and condemned, the *ecclesiastical court* shall not proceed against him. As if a man

be

be convict at *common law* for having two wives, or hath been adjudged the reputed father of a bastard son, &c.

Exception was taken to the return, because it is said, that *Sanchee, &c.* were imprisoned for contempt in a suit for detention of tythes or other *ecclesiastical* duties; and it ought to appear for which the suit was specially. For though the statute that gives this remedy is in general words, yet, in the return the cause of imprisonment ought to be certainly expressed, to the end that it may appear to the court that it was an *ecclesiastical duty*, for which they are imprisoned. And of this opinion was the whole court, and therefore the quakers were discharged out of custody. *Vide Lord Raym. 323. Hil. 9. Wil. 3.*

32 H. 8. cap. 7. sect. 1 and 2. By statute 32 H. 8. c. 7. *sect. 1, 2.* (which was also made upon occasion of the dissolution of monasteries, and which was chiefly intended to enable laymen, that, by the dissolution, has estates or interests in parsonages, or vicarages inappropriate, or otherwise, in tythes, to sue for subtraction of tythes in the ecclesiastical courts) *It is enacted* as followeth: “Where divers persons inhabiting in sundry counties and places of this realm, not regarding their duties to Almighty God, and to the King our Sovereign Lord, but in a few years past more contemptuously and commonly presuming to offend and infringe the good and wholesome laws of this realm, and gracious commandments of our Sovereign Lord, than in times past hath been seen or known, have not let- ted to subtract and withdraw the lawful and accustomed tythes of corn, hay, pasturages, and other sort of tythes and oblations commonly due to the owners, proprietaries and possessors of the parsonages, vicarages, and other ecclesiastical places within this realm; being the more encouraged thereto, for that divers of the King’s subjects, being lay-persons, having parsonages, vicarages, and tythes to them and their heirs, or to the heirs of their bodies, or for term of life or years, cannot by the order and course of the *ecclesiastical laws* of this realm, sue in any ecclesiastical court for the wrongful

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“ wrongful with-holding and detaining of the said tythes or other duties, nor can by the order of the common laws of this realm have any due remedy against any person, his heirs or assigns, that wrongfully detaineth or with-holdeth the same; by occasion whereof much controversy, suit and variance is like to ensue among the King's subjects, to the great damage and decay of many of them, if convenient and speedy remedy be not provided: *It is* Every person to therefore enacted, That all persons of this realm, pay tythes according to custom of what estate, degree or condition soever they be, tom of the pa- shall fully, truly, and effectually divide, set out, and yield, or pay, all and singular tythes and offerings aforesaid, according to the lawful customs and usages of parishes and places, where such tythes or duties shall arise or become due; and if any person of his ungodly and perverse will, shall detain and with-hold any of the said tythes or offerings, or any part thereof, then the person or persons, being ecclesiastical or lay, having cause to demand the said tythes or offerings, being thereby wronged or grieved, shall and may convene the person so offending, before the ordinary, his commissary, or the competent minister or lawful judge of the place where such wrong shall be done, according to the ecclesiastical laws; and in every such cause or matter of suit, the same ordinary or other judge, having the parties or their lawful procurators before him, shall proceed to the examination, hearing, and determination of every such cause or matter, ordinarily or summarily, according to the course and the process of the said ecclesiastical laws; and thereupon give sentence accordingly.”

SECT. 3. “ And if any of the parties shall appeal from the sentence, order, and definitive judgment of the said ordinary, or other competent judge as aforesaid, then the same judge shall, upon such appeal made, adjudge to the other party the reasonable costs of his suit therein before expounded; and shall compel the same party appellant to satisfy and pay the same costs so adjudged, by compulsory process and censures of the said laws ecclesiastical; taking surety of the other party to whom such costs shall

“ shall be adjudged and paid, to restore the same costs
 “ to the party appellant, if afterwards the principal
 “ cause of that suit of appeal shall be adjudged against
 “ the same party to whom the same costs shall be
 “ yielded: and so every ordinary or other competent
 “ judge ecclesiastical shall adjudge costs to the other par-
 “ ty, upon every appeal to be made in a suit or cause of
 “ subtraction or detention of any tythes or offer-
 “ ings, or in any other suit to be made concerning
 “ the duty of such tythes or offerings.”

SECT. 4. “ And if any person, after such sentence
 “ definitive given against him, shall obstinately and
 “ wilfully refuse to pay his tythes or duties, or such
 “ sums of money so adjudged, wherein he shall be
 “ condemned for the same; it shall be lawful for two
 “ justices of the peace for the same shire, whereof one
 “ to be of the *quorum*, upon information, certificate
 “ or complaint to them made in writing by the said
 “ ecclesiastical judge that gave the same sentence, to
 “ cause the same party so refusing to be attached and
 “ committed to the next gaol, and there to remain
 “ without *bail* or *mainprize*, till he shall have found
 “ sufficient sureties, to be bound by recognizance or
 “ otherwise, before the same justices, to the use of
 “ our Lord the King, to perform the said definitive
 “ sentence and judgment.”

SECT. 5. “ PROVIDED, That no person shall
 “ be sued, or otherwise compelled to pay any tythes,
 “ for any manors, lands, tenements, or other heredi-
 “ taments, which by the laws or statutes of this realm
 “ are discharged, or not chargeable with the payment
 “ of any such tythes.

SECT. 6. “ PROVIDED ALSO, That this shall
 “ not in any wise bind the inhabitants of the city of
 “ London, and suburbs of the same, to pay their
 “ tythes and offerings within the same city and sub-
 “ urbs, otherwise than they ought to have done
 “ before.”

SECT. 7. “ And in all cases where any person shall
 “ have any estate of inheritance, freehold, term, right
 “ or

" or interest in any parsonage, vicarage, portion,
 " pension, tythes, oblations, or other *ecclesiastical* or
 " *spiritual* profits, which shall be made *temporal*, or
 " admitted to be in *temporal* hands, and *lay* uses and
 " profits by the laws of the statutes of this realm, shall
 " be disseised, deforced, wronged, or otherwise kept
 " or put from their lawful inheritance, estate, seisin,
 " possession, occupation, term, right or interest there-
 " in, by any other person claiming to have interest in,
 " or title to the same; the person so disseised, de-
 " forced, or wrongfully kept or put out, his heirs, his
 " wife, and such other to whom such injury and
 " wrong shall be done, may have their remedy in the
 " King's temporal courts, or other temporal courts, as
 " the case shall require, for the recovery or obtain-
 " ing of the same, by writs original of *præcipe quod*
 " *reddat*, *assize*, of *novel disseisin*, *mordancestor*, *quod ei*
 " *deforceat*, writs of dower, or other writs original,
 " as the case shall require, to be devised and granted
 " in the King's court of *Chancery*, in like manner and
 " form as they might have had for lands, tenements,
 " or other hereditaments, in such manner to be de-
 " manded; and writs of *covenants*, and other writs for
 " fines to be levied, and all other assurances to be had
 " of the same, shall be granted in the said *Chancery*,
 " according as hath been used for fines to be levied,
 " and assurance to be had of lands, tenements, or
 " other hereditaments."

SECT. 8. " PROVIDED, That this shall not
 " give any remedy, cause of action or suit, in the
 " courts *temporal*, against any person who shall refuse
 " to set out his tythes, or shall with-hold or refuse to
 " pay his tythes or offerings; but that in all such
 " cases, the party being *ecclesiastical* or *lay*, having
 " cause to demand, or have the said tythes or offer-
 " ings, and thereby wronged or grieved, shall have
 " his remedy for the same in the *spiritual* courts, ac-
 " cording to the ordinance in the first part of this act
 " mentioned, and not otherwise."

By *Stat. 2 and 3 Edw. 6. c. 13.* the aforesaid acts of *2 and 3 Edw. 6.*
27 H. 8. c. 20. and *32 H. 8. c. 7.* shall stand in full
 force: and moreover, it is further enacted as followeth,
cap. 13.
 viz.

viz. SECT. 1. " All persons shall truly and justly, " without fraud or guile, divide, set out, yield and " pay all manner of the *predial* tythes, in their proper kind, as they rise and happen, in such manner and form as hath been of right yielded and paid " within *forty years* next before the making of this act, or of right or custom ought to have been paid; and no person shall take or carry away any such or like tythes, which have been yielded or paid, " within the said *forty years*, or of right ought to have been paid, in the place or places tytheable of the same, before he hath justly divided or set forth the tythe thereof, the *tenth part* of the same, or otherwise agreed for the same tythes with parson, " vicar, or other owner, proprietor, or farmer of the same tythes, under the pain of forfeiture of *treble value* of the tythes so taken or carried away."

SECT. 2. " At all times whensoever, and as often as any *predial* tythes shall be due at the tything of the same, it shall be lawful to every party to whom any of the said tythes ought to be paid, or his deputy, or servant, to view and see their said tythes to be justly and truly set forth and severed from the *nine parts*; and the same quietly to take and carry away: and if any person carry away his corn or hay, or his other *predial* tythes, before the tythe thereof be set forth, or willingly withdraw his tythes of the same, or of such other things whereof *predial* tythes ought to be paid; or do stop or let the parson, vicar, proprietor, owner, or other their deputies or farmers, to view, take, and carry away their tythes, as is above said; by reason whereof the said tythe or tenth is lost, impaired or hurt; then, upon due proof thereof be made before the *spiritual* judge, or any other judge to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting, or stopping, shall pay the *double value* of the tenth or tythe so taken, lost, withdrawn or carried away, over and besides the costs, charges and expences of the suit, in the same: the same to be recovered before the *ecclesiastical* judge, according to the King's *ecclesiastical laws*."

SECT. 4. " PROVIDED, That no person shall be sued, or otherwise compelled to yield, give, or pay, any manner of tythes, for any manors, lands, tenements, or hereditaments, which by the laws and statutes of this realm, or by any privilege or prescription, are not chargeable with the payment of any such tythes, or that be discharged by any composition real."

SECT. 13. " And if any person do subtract or withdraw any manner of tythes, obventions, profits, commodities, or other duties, (before mentioned) or any part of them, contrary to the true meaning of this act, or of any other act heretofore made; the party so subtracting, or withdrawing the same, may be convented and sued in the King's ecclesiastical court, by the party from whom the same shall be subtracted or withdrawn; to the intent the King's ecclesiastical judge may hear and determine the same, according to the King's ecclesiastical laws: and it shall not be lawful to the parson, vicar, proprietor, owner, or other their farmers or deputies, contrary to this act, to convert or sue such withdrawer of tythes, obventions, and other duties aforesaid, before any other judge than ecclesiastical. And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the aforesaid causes of tythes, obventions, profits, emoluments, and other duties aforesaid, or in any of them, (and no appeal or prohibition hanging) and the party condemned do not obey the said sentence, it shall be lawful to every such judge ecclesiastical to excommunicate the said party, so as aforesaid condemned, and disobeying: In which sentence of excommunication, if the said party excommunicate wilfully stand, and endure still excommunicate, but the space of forty days next after, upon denunciation and publication thereof in the parish church, or the place or parish where the party so excommunicated is dwelling, or most abiding, the said judge ecclesiastical may then, at his pleasure, signify to the King in his court of Chancery, of the state and condition of the said party so excommunicate, and thereupon require process de excommunicato capiendo, to be

" awarded against every person as hath been so excommunicate."

SECT. 14. " And if the party in such case shall sue for a prohibition, he shall, before any prohibition granted, deliver to some of the justices or judges of the court where he demandeth prohibition, a true copy of the libel, subscribed by his hand; and under the copy of the said libel shall be written the suggestion whereof he demandeth the prohibition: and in case the said suggestion, by two honest and sufficient witnesses at least, be not proved true in the court where the said prohibition shall be so granted, within six months next following after said prohibition shall be so granted and awarded; then the party that is letted or hindered of his suit in the ecclesiastical court by such prohibition shall, upon his request and suit, without delay, have a consultation granted by the said court; and shall also recover double costs and damages, against the party that so pursued the prohibition, to be assigned or assessed by the same court; for which costs and damages the party may have an action of debt."

SECT. 15. " PROVIDED, That nothing herein shall extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter, cause, or thing, contrary to the *statute of Westminster, 2. c. 5.* the *statutes of articuli cleri, circumspecte agatis, sylva cœdua, the treatise de regia prohibitione,* nor against the *statute of 1. Edw. 3. c. 10.* nor to hold plea in any matter whereof the King's court of right ought to have jurisdiction."

*Truly and justly, without fraud or guile.] See sect. 1. of the preceding statute. In the case of Heale and Sprat, Tri. 44. Eliz. in a prohibition; the case was, Heale did set out his *predial tythes*, and divided them justly from the nine parts, and soon after carried away the same. Sprat sued for a subtraction of the same in the ecclesiastical court. Heale pleaded that he had set them out, as above; whereupon Sprat said, that presently after his setting out, he carried the same away, to the defrauding of the statute. Adjudged, that this was fraud and*

and *guile* within this act; albeit he did justly divide the same within the letter of this law. It was further resolved, that if the owner of the corn before severance grant the same to another, of intent that the grantee should take away the same, to the end to defraud the parson of his tythe, this is *fraud* and *guile* within this statute. *Vide 2 Inst. 649.*

Predial tythes.] This branch of the stat. extends only to *predial tythes*; thus, in the case of *Boot and Soutbraie, E. 1. in debt* on this statute, by the parson of the church, for not setting forth of the tythes of *cheese, calves, lambs, cherries, and pears*, to have the *treble value*; the defendant pleaded *nihil debet*, and it was found against him; and it was moved in arrest of judgment, that the said tythes of *cheese* or *calves*, and *lambs*, were not *predial tythes*, and therefore not within this branch of the statute; and this act is *penal*, and shall not be taken by *equity*; which was allowed by the whole court. *Vide 2 Inst. 649.*

Within forty years next before the making, as this act.] This time of forty years is here set down, because forty years in the ecclesiastical court about tythes make a *prescription*. *Vide 2 Inst. 646. 1 Ought. 263.*

Or of right or custom ought to have been paid.] The sense of these words of right ought to have been paid, is of tythes to be yielded in *specie* within forty years; and the sense of the words of right or custom is, by *rightful custom, de modo decimandi*. *Vide 2 Inst. 650.*

Under the pain of forfeiture of treble value of the tythes so taken or carried away.] This branch doth not give the forfeiture to any person in certain; and therefore it was pretended, that the forfeiture should be given to the King; and the Attorney-General, *Hil. 29 Eliz.* did exhibit an information in the *Exchequer* against one *Wood*, a parishioner of *Jelington*, in the county of *Cambridge*, for this *treble forfeiture*, for carrying away his tythes before they were justly divided. The defendant pleaded *not guilty*; and by a jury at the bar he was found guilty; and in arrest of judgment it was moved, that in this case the forfeiture was not given to

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the King; for that the words of the act be, under the pain of forfeiture of *treble value* of the tythes so taken away: and whensoever a forfeiture is given against him, that doth dispossess the owner of his property, as here he doth of his tythes, there the forfeiture is given to the party grieved or dispossessed; and the rather, for that this is an additional law, and made for the benefit of the proprietor of the tythes; and so adjudged by *Manwood* and the whole court of *Exchequer*; and this was the first leading case, that was adjudged upon this point; and ever since it hath been received for law, that the party interested in the tythes shall in an action of *debt* recover the *treble value*. *Vide 1 Inst. 159.*
2 Inst. 650.

The *treble value* only, and not the tythes themselves, nor any satisfaction for them, may be recovered in the *temporal court*: that being out of the jurisdiction of those courts, and wholly in the *spiritual court*; which is the reason why in all suits upon this statute the action is not laid for subtraction of tythes, but for a contempt of the statute of not setting them out; and being a contempt, the action dies with him who committed the contempt, and doth not lie against his executor. *Vide Gibs. Cod. p. 697.* *1 Vern. 60.*

Held, that an action grounded on this statute for not setting forth of tythes, is not within the *statute of limitations*; that not extending to actions grounded on acts of parliament; therefore the plaintiff is not by law confined to *six years*, or to any other time certain, within which to bring his action. *Vide Wats. cap. 58.*

Determined, that this statute, which gives *treble damages*, does not allow the jury to give other damages. No costs being given by the statute; the jury can assess no costs. *Vide Mo. 915.*

Neither *damages* nor *costs* can be recovered with the *treble value*, because statute has not expressly given them, except that by the statute *8 & 9 W. c. 11. IT IS ENACTED*, That in all actions of *debt* on the statute for not setting forth of tythes, wherein the *single value or damage* found by the jury shall not exceed the

sum of twenty nobles: the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, shall recover his *costs of suit*; and if the plaintiff shall become *nonsuit*, or suffer a *discontinuance*, or a *verdict* shall pass against him, the defendant shall recover his costs.

Shall pay the double value.] See sect. 2. The reason why only the *double value* is, by this branch of the statute, to be recovered in the *ecclesiastical court*, where, by the former branch, the parson at the *common law* shall recover the *treble*, is, that in the *ecclesiastical court* he shall recover the tythes themselves; and therefore the value recovered in the *ecclesiastical court* is equivalent with the *treble* forfeiture at *common law*. *Vide 2 Inst. 650.*

Over and besides the costs, charges and expences.] So as the suit in the *ecclesiastical court* is more advantageous than the suit for the *treble* forfeiture at the *common law*. At the *common law* he shall recover no costs; but he shall recover in the *ecclesiastical court*, his *costs, charges, and expences.* *Vide 2 Inst. 651.*

May be converted.] See sect. 13. In the case of *Machin and Molton, East. 11 W. 3.* on motion for the discharge of a rule, by which prohibition was granted, unless cause shewed, to the Consistory Court of the Archbishop of *York*; where *Molton*, rector of the church of *South Collingham*, in the diocese of *York*, preferred a libel against *Machin* for subtraction of tythes; and the motion for the prohibition was grounded on a suggestion that *Machin* lived within the diocese of *Lincoln*, and therefore ought not to be cited out of the diocese where he lived, by *statute 23 H. 8. c. 9.* the cause which was shewed to the court to discharge the rule was, *Machin* had lands within the diocese of *York*, namely, in the parish of *South Collingham*; for the tythes of corn growing on which lands *Molton* libelled in the Consistory Court of *York*; and when the citation was served, *Machin* was there, though he lived generally within the diocese of *Lincoln*. *Holt, Chief Justice, held, That if a man lives within*

within the diocese of *A*, and occupies lands in the diocese of *B*, if he subtracts tythes in *B*, he may be cited and sued there; and it is not within the said statute; for when he occupies lands in *B*, that makes him an inhabitant there, and out of the intent of the statute; and by *statute 32 H. 8. c. 7. sect. 2.* the suit for withholding of tythes in express words is appointed to be before the ordinary of the place where the wrong was done. *Vide Lord Raym. 452. 534.*

By two honest and sufficient witnesses at least.] See Sect. 14. This clause was made in favour of the clergy, for proof to be made by witnesses, which they had not at the *common law*. If the suggestion be in the negative, as if the proprietary of a parsonage inappropriate sue for tythes, and the cause of the suggestion be, that the parsonage is not inappropriate; or if a parson sue for tythes of lands in his parish, and the party sue for a prohibition; for that the land lies not in that parish, or that the parson that sue for tythes was not inducted; or any the like cause, in the negative, or any matter of fact, he shall not produce any witnesses by force of this branch, because a negative cannot be proved: and therefore a prohibition upon causes in the negative remains as it was at the *common law*. *Vide 2 Inst. 662.*

Proved true.] It is sufficient in this case that enough is proved on which to ground a prohibition, though the suggestion be not shewn to be strictly and wholly true. In a case where the suggestion was for *twenty acres of pasture*, and as many acres of *wood* in lieu of tythes, and proof was only made of the wood; or where the suggestion was for *wool* and *lamb*, and the witnesses only proved as to the *lamb*; or for *a hundred acres*, when they were only *sixty*; or for *twenty shillings* by way of *modus*, where the sum was *forty shillings*; in these cases, the proofs were adjudged to be sufficient, because enough was proved to shew, that the *court christian* ought not to hold plea thereof. If proof is neither made of the *modus laid*, nor of any other *modus*, then the suggestion is not proved. *Vide Gibbs. 699.*

Of the Remedies to be taken for Recovery of Tythes.

87

Within six months.] If there is no certainty in the first proof, it cannot be supplied by good proof after the *six months*; but if good proof is made within the time, it may be certified after the time. *Vide Gibs.* p. 700.

Six months.] That is, *six calendar months*; and not to be reckoned by *twenty-eight days* to the month. *Vide 2 Salk.* p. 554.

Six months next following.] Which must be computed from the *teste* of the *writ*, and not *six months* in the term time only, but the vacation shall be included as part of the time. *Vide 2 Salk.* 554. *Lord Raym.* 1172.

Have a consultation granted.] After which the party may have a new prohibition on the same libel; for *statute 50 Edw. 3.* against prohibition after consultation extends not to those consultations which are granted on the matter of the suggestion. *Vide Gibs.* p. 700.

By *stat. 7 & 8 W. 3. c. 6. sect. 6.* For the more easy and effectual recovery of small tythes, and the value of them, where the same shall be unduly subtracted and detained, where the same do not amount to above the yearly value of forty shillings from any one person, it is enacted, " That all persons shall well and truly " set out and pay all and singular the tythes, com- " monly called *small tythes*, and compositions and " agreements for the same, with all offerings, obla- " tions, and obventions, to the several rectors, vicars, " and other persons to whom they shall be due in their " several parishes, according to the rights, customs, " and prescriptions commonly used within the said " parishes respectively; and if any person shall sub- " tract or withdraw, or any ways fail in the true " payment of such small tythes, offerings, oblations, " obventions, or compositions, by the space of twenty " days at most after demand thereof, it shall be law- " ful for the person to whom the same shall be due to " make his complaint in writing to two or more just- " tices of the peace within that county, place, or di-

7 & 8 W. 3.
cap. 6.

“ vision, where the same shall grow due ; neither of
 “ which justices is to be patron of the church or cha-
 “ pel whence the said tythes shall arise, nor any ways
 “ interested in such tythes, offerings, oblations, ob-
 “ ventions, or compositions aforesaid.”

Sect. 2. “ And on such complaint the said jus-
 “ tices shall summon in writing under their hands and
 “ seals, by reasonable warning, every such person
 “ against whom such complaint shall be made ; and
 “ after his appearance, or upon default of appearance,
 “ the said warning or summons being proved before
 “ them upon oath, the said justices shall proceed to
 “ hear and determine the said complaint ; and upon
 “ the proofs, evidences, and testimonies produced
 “ before them, in writing under their hands and
 “ seals adjudge the case, and give such reasonable
 “ allowance and compensation for such tythes, obla-
 “ tions, and compositions so subtracted or withheld,
 “ as they shall judge to be just and reasonable, and
 “ all such costs and charges not exceeding *ten shillings*,
 “ as upon the merits of the cause shall appear just.”

Sect. 3. “ If any person shall refuse or neglect, for
 “ the space of ten days after notice given, to pay or
 “ satisfy any such sum of money, as upon such com-
 “ plaint and proceeding shall by two such justices be
 “ adjudged as aforesaid ; in every such case, the con-
 “ stables and church-wardens of the said parish, or
 “ one of them, shall, by warrant under the hands and
 “ seals of the said justices to them directed, distrain
 “ the goods and chattels of the party so refusing or
 “ neglecting as aforesaid ; and after detaining them,
 “ [not less than *four days*, nor more than *eight*, by
 “ stat. 37 Geo. 2. c. 20.] in case the said sum adjudg-
 “ ed, together with reasonable charges of making
 “ and detaining the said distress, be not tendered or
 “ paid by the said party in the mean time, shall make
 “ public sale thereof, and pay to the party complain-
 “ ing so much of the money arising by such sale as
 “ may satisfy the said sums so adjudged, retaining to
 “ themselves such reasonable charges for making and
 “ keeping the said distress as the said justices shall
 “ think fit ; and also deducting their reasonable
 “ charges

“ charges of selling the said distress ; returning the
“ overplus (if any shall be) to the owner upon de-
“ mand. *Stat. 27 Geo. 2. c. 20.*”

Sect. 4. “ And the said justices shall have power to
“ administer an oath.”

Sect. 5. “ **PROVIDED**, That this act shall not ex-
“ tend to any tythes, oblations, payments, or obven-
“ tions, within the city of *London*, or liberties there-
“ of ; nor to any other city or town-corporate where
“ the same are settled by act of parliament.”

Sect. 6. “ And no complaint shall be heard and
“ determined by the said justices, unless the complaint
“ shall be made within *two years* next after the time
“ that the same tythes, oblations, obventions, and
“ compositions did become due.”

Sect. 7. “ **PROVIDED ALSO**, That any person
“ finding himself aggrieved by any judgment to be
“ given by such two justices, may appeal to the next
“ general quarter-sessions to be held for that county,
“ or other division ; and the justices there shall pro-
“ ceed finally to hear and determine the matter ; and
“ to reverse the said judgment, if they shall see cause ;
“ and if they shall find cause to confirm the said judg-
“ ment, they shall decree the same by order of sessions,
“ and shall also proceed to give such costs against
“ the appellant, to be levied by distress and sale of the
“ goods and chattels of the said appellant, as to them
“ shall seem just and reasonable, and no proceedings
“ or judgment had by virtue of this act, shall be re-
“ moved or superseded by any *writ of certiorari*, or
“ other writ out of his Majesty’s courts of *Westminster*,
“ or any other court, unless the title of such tythes,
“ oblations, or obventions, shall be in question.”

Sect. 8. “ **PROVIDED**, That where any person
“ complained of for subtracting or withholding any
“ small tythes, or other duties aforesaid, shall, before
“ the justices to whom such complaint is made, insist
“ upon any prescription, composition, or *modus deci-
“ mandi*, agreement or title, whereby he ought to
“ be

“ be freed from payment of the said tythes, or other
 “ dues in question, and deliver the same in writing
 “ to the said justices, subscribed by him, and shall
 “ then give to the party complaining reasonable and
 “ sufficient security, to the satisfaction of the said jus-
 “ tices, to pay all such costs and damages, as upon a
 “ trial at law to be had for that purpose in any of his
 “ Majesty’s courts, having cognizance of that matter,
 “ shall be given against him, in case the said prescrip-
 “ tion, composition, or *modus decimandi*, shall not, on
 “ the said trial, be allowed; in that case, the said
 “ justices shall forbear to give any judgment in the
 “ matter; and then, and in such case, the party
 “ complaining shall be at liberty to prosecute such
 “ person for his said subtraction in any other court,
 “ where he might have sued before the making of this
 “ act.”

Sect. 9. “ And every person who shall, by virtue of
 “ this act, obtain any judgment, or against whom any
 “ judgment shall be obtained before any justices of the
 “ peace out of sessions for small tythes, oblations,
 “ obventions, or compositions, shall cause, or pro-
 “ cure the said judgment to be enrolled at the next
 “ general quarter-sessions, to be held for the said
 “ county, or other division; and the clerk of the
 “ peace shall, upon tender thereof, inroll the same;
 “ and shall not receive for the inrollment of any one
 “ judgment any fee or reward exceeding *one shilling*;
 “ and the judgment so enrolled, and satisfaction made
 “ by paying the sum adjudged, shall be a good bar to
 “ exclude the said rectors, vicars, and other per-
 “ sons, from any other remedy for the said small
 “ tythes, oblations, obventions, or compositions, for
 “ which the said judgment was obtained.”

Sect. 10. “ If any person, against whom such judg-
 “ ment shall be had, shall remove out of the county
 “ or other division, before the levying of the sum
 “ adjudged, the justices who made the judgment, or
 “ one of them, shall certify the same, under hand
 “ and seal, to any justice of such other county or place
 “ wherein the said person shall be an inhabitant, who
 “ shall, by warrant under his hand and seal, to be
 “ directed

“ directed to the constables or church-wardens of the place, or one of them, levy the sums so adjudged to be levied upon the goods and chattels of such person, as fully as the said other justice might have done if he had not removed as aforesaid.”

Sect. 12. “ And the justices, who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding ten shillings, to the party prosecuted, if they shall find the complaint to be false and vexatious, to be levied in manner and form aforesaid.”

Sect. 13. “ And if any person shall be sued for any thing done in the execution of this act, and the plaintiff in such suit shall discontinue his action, or be nonsuit, or a verdict pass against him, such person shall recover double costs.”

Sect. 14. “ PROVIDED, That any clerk, or other person, who shall begin any suit for recovery of small tythes, oblations, or obventions, not exceeding the value of forty shillings, in his Majesty’s court of Exchequer, or in any the ecclesiastical courts, shall have no benefit by this act for the same matter for which he hath so sued.”

Complaint in writing.] See sect. I. of the foregoing Statute. ORDER for non-payment of small tythes was quashed, because said only upon complaint generally; and the 7 & 8 W. 3. c. 6. requires the complaint to be in writing. *Vide Stran.* p. 264,

By stat. 7 & 8 W. 3. c. 34. “ WHEREAS by reason of a pretended scruple of conscience, quakers do refuse to pay tythes and church-rates, it is enacted, That where any quaker shall refuse to pay or compound for his great or small tythes, or to pay any church-rates, it shall be lawful for the two next justices of the peace of the same county, (other than such justice as is patron of the church or chapel, whence the said tythes shall arise, or any ways interested in the said tythes) upon the complaint of any parson, vicar, farmer, or proprietor of tythes,

Stat. 7 and 8
W. 3. cap. 34.

“ church-warden or church-wardens, who ought to have, receive, or collect the same, by warrant under their hands and seals, to convene before them such quaker or quakers neglecting or refusing to pay or compound for the same, and to examine upon oath (or affirmation, in case of the examination of a quaker) the truth and justice of the said complaint, and to ascertain and state what is due and payable; and by order under their hands and seals, to direct and appoint the payment thereof, so as the sum ordered do not exceed ten pounds; and upon refusal to pay according to such orders, it shall be lawful for any one of the said justices, by warrant under his hand and seal, to levy the same by distress and sale of the goods of such offender, his executors or administrators, rendering only the overplus to him or them; the necessary charges of distraining being thereout first deducted and allowed by the said justice. And any person finding himself aggrieved by any judgment given by such two justices may appeal to the next general quarter-sessions to be held for the county, riding, city, liberty, or town-corporate; and the justices there shall proceed finally to hear and determine the matter, and to reverse the said judgment, if they see cause; and if they shall find cause to continue the said judgment, they shall then decree the same by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had by virtue of this act shall be removed or superseded by any *writ of certiorari*, or other writ out of his Majesty's courts at Westminster, or any other court whatsoever, unless the title of such tythes shall be in question.”

Sect. 5. “ PROVIDED, That in case any such appeal be made as aforesaid, no warrant of distress shall be granted until after such appeal be determined.”

Stat. 1 Geo. 1. By stat. 1 Geo. 1. s. 2. c. 6. *sect 2.* the like remedy stat. 2. cap. 6. shall be had against any quaker or quakers, for the recovery
sect. 2.

very of any tythes or rates, or any customary or other rights, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid, for the stipend or maintenance of any minister or curate officiating in church or chapel; and any two or more justices of the peace of the same county or place (other than such justice as is patron of any such church or chapel, or any ways interested in the said tythes) upon complaint of any parson, vicar, curate, farmer, or proprietor of such tythes, or any church-warden or chapel-warden, or other person who ought to have, receive, or collect any such tythes, rates, dues, or payments, as aforesaid, are authorized and required to summon, in writing under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made; and after his or their appearance, or upon default of appearance, the said warning or summons being proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein as in the aforesaid act is limited; and also to order such costs and charges as they shall think reasonable, not exceeding *ten shillings*, as upon the merits of the cause shall appear just: which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter-sessions, with such costs and remedy for the same; and shall not be removed into any other court unless the titles of such tythes, dues, or payments shall be in question; in like manner as by the aforesaid act is limited and provided.

By *stat. 27 G. 2. c. 20.* which directs in what manner *stat. 27 Geo. 2. c. 20.* distresses shall be made by justices of the peace, and which gives to the justices power to order the goods distrained to be kept for a certain time before they be sold, and gives power also to the officers making the distress to deduct their reasonable charges, it is provided, that the same shall not extend to alter any provisions relating to distresses to be made for the payment of tythes and church-rates by the people called quakers, contained in *statutes 7 & 8 W. 3. c. 34.* and *stat. 1 Geo. 1. st. 2. c. 6.*

Notwithstanding all these statutes, tythes (if of any considerable value) are now generally sued for in the courts of equity by English bills, and for the most part in the *Exchequer*; but not upon the statute for *treble* or *double* value: for there can be no suit in equity for the recovery of the *double* or *treble* value. *Vide Wood. b. 2. c. 2. Will. 463.*

If the incumbent dies, his executor may recover the tythes which became due in the testator's life-time; but he is not intitled to the *treble* value upon the statute. *Vide 1 Vern. p. 60.*

Stat. 21 Geo. 2. c. 19. sect. 15. " WHEREAS, cap. 19. sect. 15. " where a lessor or landlord having only an estate for " life in the lands, tenements, or hereditaments, de- " mised, happens to die before or on the day on which " any rent is reserved or made payable, such rent, or " any part thereof, is not by law recoverable by the " executors or administrators of such lessor or land- " lord; nor is the person in reversion intitled thereto " any other than for the use and occupation of such " lands, tenements, or hereditaments, from the death " of the tenant for life, of which advantage hath been " often taken by the under-tenants, who thereby avoid " paying any thing for the same: for remedy there- " of, it is enacted, that where any tenant for life " shall happen to die before or on the day on which " any rent was reserved, or made payable, upon any " demise or lease of any lands, tenements, or heredi- " taments, which determined on the death of such " tenant for life; the executors or administrators of " such tenant for life shall and may, in an action on " the case recover of and from such under-tenant of " such lands, tenements, or hereditaments, if such " tenant for life die on the day on which the same was " made payable, the whole, or if before such day, " then a proportion of such rent, according to the " time such tenant for life lived, of the last year, or " quarter of a year, or other time in which the said " rent was growing due as aforesaid; making all just " allowances, or a proportionable part thereof respec- " tively."

By

By stat. 5 Geo. 3. c. 37. intitled, *An act to confirm Stat. 5 Geo. 3. all leases already made by Archbishops and Bishops, and other ecclesiastical persons, of tythes, and other incorporeal hereditaments, for one, two, or three lives, or twenty-one years; and to enable them to grant such leases, and to bring actions of debt for recovery of rents reserved and in arrear, on leases for life or lives.*

Sect. I. " WHEREAS it may be doubtful whether by the laws now in force, archbishops or bishops, masters and fellows, or any other head and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, or any other person or persons having any spiritual or ecclesiastical promotions, heretofore had, or now have, any power to make or grant any lease or leases of tythes, or other incorporeal hereditaments only, which lie in grant, and not in livery, for one, two, or three lives, or for any term or terms of years, not exceeding twenty-one years, although the ancient rent, or yearly sum, is thereby mentioned to be reserved; and all other requisites prescribed by the acts of parliament now in being to that end, or any of them, were or are justly and truly observed and performed, by reason that there is generally no place wherein a distress can be had or taken for such rent, or yearly sum; and it may be also doubtful, whether, in cases of such leases for life or lives, there is any remedy in law for such ecclesiastical or other persons, by action of debt or otherwise, for recovering the rent or yearly sum due or arrear, which is mentioned to be reserved on such leases for life or lives; therefore, for obviating all doubts touching the same, and enabling the said archbishops and bishops, master and fellows, or other heads and members of colleges or halls, deans and chapters, precentors, prebendaries, masters and guardians of hospitals, and other ecclesiastical persons, to make valid leases of such their incorporeal hereditaments, and to recover the rent or yearly sum mentioned to be reserved on any leases by them already granted or to be granted, for any one, two or three lives, as aforesaid; and also to make good

" and

“ and effectual all such leases as have already been
 “ granted by them: be it therefore enacted, &c. that
 “ all leases for one, two, or three life or lives, or any
 “ term not exceeding twenty-one years, already made
 “ and granted, or which shall at any time from and
 “ after the passing this act be made or granted, of
 “ any tythes, tolls, or other incorporeal heredita-
 “ ments, by any archbishop or bishop, master and
 “ fellows, or other head and members of colleges or
 “ halls, deans and chapters, precentors, prebendaries,
 “ masters and guardians of hospitals, and every other
 “ person and persons, who are enabled by the seve-
 “ ral statutes now in being, or any of them, to make
 “ any lease or leases, for one, two or three life or
 “ lives, or any term or number of years not exceed-
 “ ing twenty-one, of any lands, tenements, or other
 “ corporeal hereditaments, shall be, and are hereby
 “ deemed and declared to be, as good and effectual
 “ in law against such archbishop, bishop, master and
 “ fellows, or other heads and members of colleges or
 “ halls, deans and chapters, precentors, prebenda-
 “ ries, masters and guardians of hospitals, and other
 “ persons so granting the same, and their successors
 “ and every of them, to all intents and purposes, as
 “ any lease or leases already made, or to be made, by
 “ any such archbishop or bishop, master and fellows,
 “ or other heads and members of colleges or halls,
 “ deans and chapters, precentors, prebendaries, mas-
 “ ters and guardians of hospitals, and other persons
 “ having spiritual promotion, of any lands or other
 “ corporeal hereditaments, now are, by virtue of the
 “ statute of the thirty-second year of King Henry
 “ the Eighth, or any other statute now in being; any
 “ law, custom, or usage to the contrary thereof in
 “ any wise notwithstanding.”

Sect. 2. “ PROVIDED ALWAYS, that nothing
 “ herein contained shall extend, or be construed to
 “ extend, to enable any master and fellows, or other
 “ heads and members of colleges or halls, deans and
 “ chapters, precentors, prebendaries, masters and
 “ guardians of hospitals, or other ecclesiastical per-
 “ sons as aforesaid, to grant leases for any longer
 “ or

“ or other terms than by the local statutes of their
“ several foundations they are now respectively enabled,
“ to do.”

Sec. 3. “ And in case the rent or rents, yearly
“ sum or sums, reserved or made payable in or by any
“ lease or leases already made, or to be made, by
“ any archbishop or bishop, master and fellows, or
“ other head and members of colleges or halls, deans
“ and chapters, precentors, prebendaries, masters and
“ guardians of hospitals, and every other person and
“ persons so enabled to make leases as aforesaid, for
“ one, two, or three life or lives, or years, in pursu-
“ ance of the several acts of parliament already in be-
“ ing, or by this present act, or any part thereof,
“ shall be behind or unpaid by the space of *twenty-*
“ *eight days next over or after any of the days whereon*
“ the same, by such lease or leases, now are, or here-
“ after shall or may be reserved and made payable ;
“ then, and so often, and from time to time, as it
“ shall so happen, it shall and may be lawful for such
“ archbishop or bishop, master and fellows, or other head
“ and members of colleges or halls, deans and chapters,
“ prebendaries, precentors, masters and guardians of
“ hospitals, and other persons so making or granting,
“ or having made or granted, such leases as aforesaid,
“ or their executors, administrators, and successors
“ respectively, to bring an action or actions, of debt
“ against the lessee or lessees, to whom any such lease
“ or leases, for life or lives, or years, now are, or
“ hereafter shall be made and granted to his, her, or
“ their heirs, executors, administrators, or assigns, for
“ recovering the rent or rents which shall be then due
“ and in arrear, to any such archbishop or bishop,
“ masters and fellows, or other heads and members of
“ colleges or halls, deans, chapters, precentors, pre-
“ bendaries, masters and guardians of hospitals, and
“ other person or persons before mentioned, his or
“ their executors, administrators, or successors, in
“ such and the same manner as fully and effectually
“ to all intents and purposes as any landlord or lessor,
“ or other person or persons could or might do for
“ recovering of arrears of rent due on any lease or
“ leases, for life or lives, or years, by the laws now

C H A P. on VII.

What leases parsons, vicars, and other ecclesiastical persons may make of their glebe, tythes, farms, &c.

to provide that such leases of glebe, tythes, farms, &c.

AT common law, no bishop, abbot, prior, dean, prebend, or other single corporation, could make any alienation or lease to bind their successors, without the confirmation of their chapter, convent, &c. *Vide 1 Inst. 45. a.*

The first statute that made any alteration was Stat. 32 Hen. 8, statute of 32 H. 8, commonly called the *Enabling Statute*; whereby it is enacted,

“ That all leases then after to be made of a manor, lands, tenements, or hereditaments, by writing under hand and seal, for term of years, or for term of life, by any parson or parsons of the full age of twenty-one years, having any estate of inheritance either in fee-simple or fee-tail, in their own rights, or in the right of their churches, &c. shall be good and effectual in the laws against the lessors, their wives, heirs, and successors.”

“ PROVIDED, That same shall not extend to any lease of any manors, &c. where any old lease should be in being, unless the same expire, be surrendered or ended within one year after the making of such new lease, nor shall extend to any grant to be made of any reversion of any manors, &c. nor to any lease of any manors, &c. which have not most commonly been letten to farm, or occupied by the farmers thereof, by the space of twenty years next before such lease thereof made, nor to any lease to be made without impeachment of waste, or to any lease to be made above the number of three lives, or twenty-one years at the most, from the day of the making thereof; and that upon the making of every such lease there be reserved yearly, during

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“ the said lease, due and payable to the said lessors, their heirs and successors, to whom the reversion shall appertain, &c. so much yearly farm or rent, or more, as hath most accustomably been yielded and paid for the said manors, &c. so to be letten within twenty years next before the lease thereof made, &c.”

“ This statute not to extend to give any liberty or power to any parson, vicar, &c. to make any lease or grant of any of their messuages, lands, tythes, &c. or in any other manner than they should or might haye had before the making same,”

Note. Before this statute no archbishop, bishop, archdeacon, dean or prebend, could have made any lease to have bound his successors without the confirmation and consent of their chapters, &c. as aforesaid, but now they are enabled to make leases for their lives, or one-and-twenty years, without any confirmation at all with these qualifications.

*The requisites
to constitute an
ecclesiastical
lease under the
statutes.*

1st. “ Such lease must be made by writing indented, and not by parol or deed poll.”

2d. “ It must be made to begin from the making, or day of the making of such lease.”

3d. “ If there be any old lease in being at the time of the making of such lease, it must expire, be surrendered or ended within a year after the making of such new lease, and such surrender must be absolute, and not upon condition,”

4th. “ There must not be a double lease in being at one and the same time; the one for years, and the other for lives,”

5th. “ Such lease must be of lands manurable or corporeal, which are necessary to be letten, and out of which a rent may be reserved, and not of things that lie merely in grant, as fairs, markets, tythes, tolls, franchises, advowsons, &c.”

6th.

Of Leases of Glebe, &c. made by Parsons, &c.

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6th. " Such lease must be of lands, &c. which have most commonly been letten to farm, or occupied by the farmers thereof for the most part of twenty years before the making of such lease: so if they have been to let for eleven years within twenty years next before the making of the new lease, it suffices: and a letting to farm by copy of court-roll, is a sufficient letting to farm within this statute, to enable the making of such new lease."

7th. " There must be reserved upon every such lease, and payable during the continuance thereof to the lessor, his successors, &c. so much farm or rent as hath most accustomably been yielded and paid for the land so demised within twenty years next before such lease made: so that it sufficeth, if the yearly rent or farm be reserved, though heriots and other casual services be omitted; so if a greater rent than formerly be reserved, it sufficeth: but if the lessor reserve a less rent than the ancient during his life, and after the full rent, yet it is naught, because it must be reserved during the whole term: so if lands usually letten be demised with any other lands, &c. though a rent be reserved that exceeds the value of those lands and the old rent; yet such lease is not good against the successor within this law. But if the rent were formerly reserved to be paid at four several days, and by the new lease be reserved to be paid all at once, so the whole rent be reserved yearly, it is well enough."

If a Bishop, &c. have two distinct manors, that have anciently been demised together, and one entire rent reserved for both manors; and these being out of lease, the Bishop, &c. may demise them severally, reserving several rents amounting to the whole ratably. These have been adjudged in the *Common Pleas* to be good, and affirmed in error in the *King's Bench*; on this principle, that if a termor for life should lease part for years, and then surrender and accept a new lease, rendering the *ancient rent*, it would be a good lease, *tamen quare*: for of that part leased by the termor, there would be two leases on foot together; but if the new lease were only of the lands not demised by

the termor, then it seems good. *Vide Kels. 392—372,*
&c. 1 Mod. p. 203; 2 Mod. p. 57; 3d Inst. 100
to 3d Inst. 100; and 100 Inst. 100; 100 Inst. 100
8th. " Lastly; Such lease must not be without
" impeachment of waste; and therefore a lease to
" one for life, remainder to another for life, remain-
" der to a third for life, is not good against the suc-
" cessor, tho' but for three lives, because the remain-
" ders make the present tenants disipunishable for waste
" for the time."

Note. Parsons and vicars being excepted in this enabling law, are left as they were at the common law; so that they could make no lease to bind the successor without the confirmation of the bishop and patron, till the statute of 13. Eliz.

A lease for *ninety-nine years*, if three lives live so long, is not good within this statute. *Vide Co. 8. 766.*

Note. This statute conferred a new power upon single corporations; but did not in any thing restrain their ancient power in making long leases and alienations of their very scites, demesnes, &c. with confirmations, as aforesaid, which being deemed a great prejudice to the church in general, a means of dilapidations, and a great hindrance of hospitality, therefore stat. 1 Elizabeth was made, which enacted, "that all gifts, grants, feoffments, fines, and other conveyances and estates, from the first day of that present parliament, to be had, made, done, or suffered, by any archbishop or bishop of any honours, castles, manors, lands, tenements, or other hereditaments, being part of the possessions of his archbishoprick or bishoprick, or united, appertaining or belonging to any the same archbishopricks or bishopricks, to any person or persons, bodies politick or corporate, (other than the Queen's Majesty, her heirs and successors) whereby any estate or estates should or might pass from the said archbishops or bishops, or any of them, other than for the term of twenty-one years, or three lives, from any such time as any such lease, grant, or assurance shall begin, and whereupon the old accustomed yearly rent

“ rent or more shall be reserved and payable yearly
“ during the said term of twenty-one years, or there
“ lives, shall be utterly void and of none effect, to all
“ intents, constructions, and purposes; any law,
“ custom, or usage to the contrary thereof in any wise
“ notwithstanding.”

Note. The exception, which gives, or rather reserves
the power to grant, &c. to the Queen, &c. was made
void by a statute made 1 Jac. cap. 3.

That though this statute enacts, That all leases made
in any other form shall be void and of none effect, to all in-
tents and purposes; yet it hath been adjudged, that it is
only to be intended as against the successors, and that
leases made in other forms shall be good, notwithstanding
against the party himself that makes them, and
may be affirmed by the successor, by the receipt of the
rent reserved thereupon.

Note. *First Elizabeth* is a private act of parliament,
that must in all cases be pleaded, and cannot be given in
evidence. *Vide Co. 4. 76—5—26—Cro. Eliz. 87*
More, 253.

Thought this statute do not restrain demising of any
lands not formerly demised; yet it does it by implica-
tion: for the accustomable rent must be reserved, and
unless accustomably let, there cannot be an accustom-
able rent; and leases within this statute must have all
the restrictions in statute 32 Hen. 8.

It must be of things manurable. *Vide Co. 5. 3. 2.* Of what things
such leases may be made.

On stat. 32 Hen. 8. & 1 Eliz. it has been held, that
archbishops and bishops may, with confirmation of the
dean and chapter, make concurrent leases; that is,
notwithstanding there be a lease in being for twenty-one
years, they may make a new lease of the same lands to
another for twenty-one years from the making thereof;
and this being confirmed as aforesaid, shall bind the
successor, the other things being observed in it. *Vide*
Inst. 45. 8. More 66. 1 Inst. 45. a.

Concurrent
leases.

Sir Edward Coke is of opinion, that like concurrent leases may be made by deans, prebends, &c; with confirmation: though some learned men are not satisfied concerning concurrent leases, because by these concurrent leases the successor loses his remedy for his rent by distress during the former term, and the tenant may be insolvent as to an action of debt. A concurrent lease for lives is not good, because upon such lease the lessor would have no remedy for his rent. *Vide 1 Inst. 45. a.* *More, 253. Cro. Eliz. 141.*

The restrictive statute against leases of deans, prebends, &c.

The next restrictive statute is 13 Elizabeth, whereby it is enacted, " That from thenceforth all leases, gifts, grants, feoffments, conveyances, or estates, to be made, had, done, or suffered by the masters and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having a spiritual or ecclesiastical living, or any houses, lands, tythes, tenements, or other hereditaments, being any part of the possessions of any such college, &c. or any wise appertaining or belonging to the same, or any of them, to any person or persons, bodies, &c. (other than for the term of twenty-one years, or three lives, from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent or more shall be reserved and payable during the said term) shall be utterly void, &c."

The penning of this statute, and 1 Eliz. being in effect the same in substance, the construction is the same; though in this there was no saving of grants to the King, and therefore being for the public good, had restrained other grants to him not warranted by this, though stat. 1 Jac. cap. 3. had never been made. *Vide Co. 5. 146.*

Parsons and vicars restrained by this statute.

Note. " Parsons and vicars had not their power any wise enlarged by statute 32 H. 8. they had no restriction on them till this statute; but from henceforth they are restrained from making any lease or grants, other than for twenty-one years, or three lives, with the qualifications in the above statutes, and such leases

“ leases must be confirmed by the patron and ordinary, because excepted in the Enabling Statute of 32 Hen. 8.”

After making of this Statute, heads of colleges, deans, prebends, &c. might have made concurrent leases, as well as bishops might: there is a proviso in Statute of 18 Eliz.

That all leases then after to be made by any the aforesaid ecclesiastical, spiritual or collegiate persons, or others, of any of their ecclesiastical, &c. lands, &c. whereof any former lease for years is in being, and not expired, surrendered or ended within three years next after the making of any such new lease, should be utterly void, frustrate, and of none effect, any law, &c.

No concurrent lease but within three years before the former ends.

Note. “ Bishops are conceived not to be comprehended within this proviso; for though the words are general enough, yet the particulars mentioned before the general words being of an inferior rank, the general words cannot draw in the more worthy.”

By provision in Statute of 18 Eliz. all bonds and covenants then after made for the making or renewing any lease contrary to the intent of that Statute, or Statute of 13 Eliz. c. 10. should be utterly void.

Bonds and covenants contrary to these statutes are void.

By Stat. 13 Eliz. it is enacted, “ That no lease made after the fifteenth day of May following, of any benefice or ecclesiastical promotion, with cure of any part thereof, and not being impropriated, should endure any longer than while the lessor should be ordinarily resident and serving the cure of such benefice, without absence above fourscore days in any one year; but that every such lease (so soon as it, or any part thereof, should come to any possession above for bidden, or) immediately upon such absence, shall cease and be void, and the incumbent so offending shall, &c. lose one year's profit of his said benefice, to be distributed by the ordinary to the poor of the parish.”

Note. The words in italics are repealed by Stat. 14 Eliz. cap. 11.

Charges on parsonages makes the grant of same void.

By same statute, " All charging of such benefices, with cure then after, with any pension, or with any profit out of the same, to be yielded or taken, other than rents reserved upon leases, should be void."

In what case a parson may demise, notwithstanding his non-residence.

Where any parson should be qualified to have two livings, he may demise the one of them, where he is not ordinarily resident, to his curate only, that shall there serve the cure. But such lease shall endure no longer than during such curate's residence without absence above forty days in any one year.

Leases, bonds, and covenants, to be void.

By stat. 4 Elizabeth, all leases, bonds, promises, and covenants, of and concerning benefices and ecclesiastical livings, with cure to be made by any curate, shall be of no other, or better force, validity, or continuance, than if the same had been made by the beneficed person himself, that shall demise the same to such curate.

Houses in corporations, &c. how to be leases.

By same statute it is enacted, That the restrictive statute 13 Eliz. c. 10. shall not extend to any grant, assurance, or lease of any houses belonging to any the persons, &c. in stat. 13 Eliz. nor to any grounds to any such houses appertaining, &c. in any city, borough, town-corporate, or market-town, or the suburbs of any of them; but that all such houses and grounds may be granted, demised, and assured, as they might have been before the making of the same, so always as such house be not the capital, or dwelling-house used for the habitation of the parsons, &c. nor have above ten acres of the same.

Not to lease in reversion.

That no lease be made by virtue of this act in reversion, nor without reserving the accustomed yearly rent at least, nor for a longer term than forty years at most, charging the lessee with repairs, and no alienation in fee, unless lands of as good yearly value be settled, &c. in lieu thereof.

Bonds, contracts, covenants, promises, in what case void.

By a proviso in this statute, all bonds, contracts, promises, and covenants, to be made for the suffering or permitting any person to enjoy any benefice or ecclesiastical promotion

promotion with cure, or to take the profits or fruits thereof, other than such bonds and covenants as shall be made for assurance of any lease heretofore made, shall be of no other force than leases made by the same person.

I. By stat. 18 Eliz. c. 11, it is enacted, That after complaint made to the ordinary, and sentence given upon any offence committed by the incumbent against statute of 13 Eliz. c. 20, whereby he shall or ought to lose a year's profit of his benefice, &c. then the ordinary within two months after such sentence and request made by the churchwardens of the parish, where, &c. or one of them, shall grant the sequestration of such profits to such inhabitant or inhabitants within the same parish, &c., as to him shall seem meet, &c.

Offences against this statute to be made to the ordinary.

On default of the ordinary, it shall be lawful for every parishioner, &c. to retain, &c. his tythes, and for the churchwardens to enter upon the glebe-land, rents, and duties of every such benefice to be employed to the use of the poor, &c. until such time as sequestration shall be committed by the ordinary; and then the churchwardens and parishioners to account to such to whom the sequestration shall be committed, who is to employ the whole profits according to the act, upon pain to forfeit the double value of the profits withheld, to be recovered in the ecclesiastical court by the poor of the parish.

Any parishioner may avail himself of a breach of this statute.

On these restrictive statutes, two observations arise, viz. *First*; That they do not by any construction enable any persons to make such leases as they were by common law disabled to make. A parson or vicar, though he is restrained from making longer leases than for twenty-one years, or three lives, even with the consent of patron and ordinary, yet is not enabled to make any lease at all, so as to bind his successors without obtaining such consent; *Secondly*; That though leases contrary to these acts are declared void, yet they are good against the lessor during his life, if he be a sole corporation, and are also good against an aggregate corporation, so long as the head of it lives, who is presumed to be the most concerned in interest. For these statutes

statutes were intended for the benefit of the successor only; and no man shall make an advantage of his own wrong. *Vide Co. Litt. p. 44 & 45.*

Note. " By the foregoing statutes it appears, that archbishops and bishops may make leases for twenty-one years, or for one, two, or three lives, with the qualifications before mentioned, without any confirmations at all: and they may make concurrent leases for twenty-one years, upon leases for twenty-one years from the making, with confirmation of the dean and chapter, with such qualifications as is aforesaid, though there be above three years in being of the old lease at the time of the making the new; and where the bishop has two chapters, there the concurrent lease must be confirmed by both chapters.

If a bishop had two chapters, and one of them surrenders, is suspended or dissolved, the confirmation of the other suffices.

There is a case in Mr. Justice Harpur's Reports, where the case is put, that a bishop made a lease, dated 2 die Maii, confirmed the third day, and sealed the fourth day of May, and held a good lease, and well confirmed.

A confirmation by the dean and chapter after the death of the bishop, comes too late; so held by *Catlyne, Suthcoate, and Windham, against Wray.*

If a bishop make several concurrent leases, and the latter is first confirmed, and after the first is confirmed; in this case, the first lease shall be preferred, because nothing passes by the confirmation in point of interest but a mere consent.

If a bishop make a grant to the King, which is confirmed by the dean and chapter before the grant is inrolled, this is well enough.

Note. " A bishop cannot make a concurrent lease for life, though upon a precedent lease for years, nor " a con-

" concurrent lease for years, where there is a lease for
" life in being."

Deans, prebendaries, heads of colleges, masters of hospitals, and other ecclesiastical persons mentioned in *statute 13 Eliz. c. 10.* may make leases for *twenty-one years*, or any lesser number of years, or for one, two, or three lives in possession, according to the qualifications above-mentioned; and they may make concurrent leases as bishops may with confirmations; but they must be within three years of the determination of the former term by expiration, surrender, or otherwise: so that in this point the bishop has the advantage.

The enabling *statute of 32 H. 8.* gives power to make leases, to hold from the making, or day of the making; yet the restrictive *statute of 13 Eliz.* makes them void, if they be not made to hold from the making, and not from the day of the making; but the leases of bishops and archbishops are not within that act.

Note. All leases should be void, other than for *twenty-one years or three lives* from the time of the commencement.

All concurrent leases of any bishop, dean, prebend, and archdeacon, are to be confirmed; the leases of bishops and archbishops are to be confirmed by the dean and chapter, or deans and chapters, if there be several chapters.

Grants made by a prebend are to be confirmed by the bishop, dean and chapter.

Grants made by deans are to be confirmed by the bishop and chapter.

Grants made by the archdeacon, by the bishop, dean and chapter.

Grants of parsons and vicars, with their patrons and ordinaries,

Grants

Grants by the incumbent of a donative, by the patron alone.

If a parson makes a lease, which is confirmed by the bishop only, who is patron, without the dean and chapter, which ought to have joined, it shall bind the successor during the lives of the bishop and incumbent, although the bishop be translated.

Grants by parsons, vicars, prebends, &c. before induction or installation, &c. although confirmed, are not binding to the successor.

If the King be patron of a prebendary, then the King and dean and chapter, and not the bishop, ought to confirm the grant.

A lease made by a prebend, parson, vicar, &c. may be confirmed for part of the term, if it be for years, that is, confirm the land to the lessee for so many years of the term; but if the term be confirmed for part of the term, it were absurd and repugnant, and should be good for the whole term: and as such lease may be confirmed for part of the term, so it may be for part of the land.

If a parson, &c. make a grant, which is confirmed by the patron and ordinary, and after be deprived, yet the grant is good.

A husband seised in the right of his wife of an advowson, the parson makes a lease warranted by the statutes before-mentioned, and the bishop and husband confirm it; this shall not bind the right of the wife but during the husband's life, but that the successor after his death will avoid it, that comes in by the presentation of the wife.

If a tenant in tail, being patron, confirm the grant of the parson with the bishop, this shall not bind the incumbent of the issue in tail.

If an usurper present, and confirm the lease of his incumbent with the bishop, and after is removed by

writ of *quare impositum*, &c. this shall not bind the clerk of the true patron.

If the true patron grant the next avoidance, and then confirm the grant of the parson, who after dies, the incumbent presented by him that had the next avoidance shall avoid the lease, and his very entry upon the lessee avoids the lease for ever.

If the parson makes a lease to the patron, which is confirmed by the bishop, this is not good; but if the patron grants it over, it amounts to a confirmation.

If a prebend, parson or vicar, make a lease, and the bishop, being patron, confirms it without the dean and chapter, yet this shall bind the bishop and all the prebends, parsons, &c. which he shall collate.

If a parson had made a lease for above *twenty-one* years before *statutes 13 & 14 Eliz.* which had been confirmed after; this had been good, and not within the restriction of those laws.

If a parson leases where there are two patrons, both ought to confirm.

If the patron and a succeeding bishop confirm the lease of the parson, it is good enough.

A prebend made a lease, reciting that it was with the consent of the bishop, who signed and sealed the lease to the lessee, but was no party to the deed.—
Note. This grant has been doubted.

As to leases, a parson or vicar may make at this day, under all the before-mentioned statutes.

That at and by the *common law*, a parson or vicar might have granted or charged his glebe in fee-simple, with the confirmation of the patron and bishop; but being excepted out of the enabling *statute 32 H. 8.* he could never make any lease or grant to bind their successors without such confirmation; then by *statute 13 Elizabeth*, parsons and vicars are restrained: so that they

they cannot grant but for *eleven years*, or *three lives* from the making of such lease, and not from the day of the making, as is before observed; and these leases and grants must be with the confirmation of the patron and ordinary, with all the qualifications expressed in the beginning of this chapter.

They may make concurrent leases, as deans, prebends, &c. may do within *three years* of the end of the former leases.

It has been a question, Whether a parson or vicar at this day can make any lease at all to bind his successor?

For by *statute 13 Eliz. cap. 20.* it is enacted, That leases of parsons, vicars, &c. that have cure of souls, shall endure no longer than they shall be ordinarily resident, and serve the cure; and that if such parson, &c. shall be absent from their cure above *eighty days* in *one year*, that then such lease shall cease, and be void.

When a parson dies, and *eighty days* incur, and this being a law for the advancement of religion and hospitality, to avoid dilapidations, it shall have an equitable construction for the preferring these ends: therefore some have held, that the death of the parson, vicar, &c. after *eighty days* have incurred from their deaths, shall make all their leases and grants void, though never so sufficiently confirmed; and rely very much upon the preamble of the statute, which begins, "That the "livings appointed for ecclesiastical ministers may not "by corrupt and indirect dealings be transferred to "other uses: be it enacted, &c. but by these leases it "is apparent the profits are converted to other uses, " &c."

Others have held the contrary opinion, because such absence is not voluntary, but by the act of God, and regularly these cannot be said absent that are not in *effe*.

Crook reports in Mott and Hale's case, adjudged in point, that their leases are void by death; yet *More* reporting the same case, says, "As to the matter in

" law

“ law, the judges were divided, two against two, and
“ that the judgment was given upon a misrecital of
“ the statute.”
There is a quare in *Dyer*, whether such leases shall
be void upon eighty days absence *ab initio*, or but from
the time of absence by eighty days; but it seems to me
with some clearness, that it shall only be void from
eighty days absence, and not *ab initio*.

For first; The words of the statute are, “ That
“ such lease shall endure no longer than the lessor shall
“ be ordinarily resident, &c.” so that till then it is to
endure; and the statute closes, “ That upon such
“ absence the term shall cease,” which it could not do
if it had not a being before; for a thing cannot cease
to be that has not been.

Another quare may be started in this case upon the
reason in the *Lincoln College case*, whether such lease shall
be void against the present incumbent that made it, or
only against his successors.

It seems that the intent of the makers of this act
was, to make such lease void against the lessor himself
upon such absence: for, as before is said, the statute
says, “ it shall endure no longer,” which is a term of
limitation, and that immediately upon such absence the
lease shall cease, and be void; and it cannot cease im-
mediately upon the absence, and yet be good during
the life of the incumbent.

In the case of *Ruel versus Hart*, stat. 43 Eliz. B. R.
the court held the contrary.

If any parson, vicar, &c. be suspended, inhibited,
or disabled to serve the cure by the space of eighty days in
a year, this shall not make such lease void, for the not
serving the cure must be voluntary.

It hath been held, that if a parson be resident, and
do not serve the cure, or serve the cure and be absent by
eighty days, that in both these cases it will make such
lease void.

Though this statute on *eighty days* absence makes such lease void made by parsons and vicars, and says nothing of confirmation; yet a confirmation of the patron and ordinary in this case seem not to amend the matter; for if the lease be void, the confirmation is of no avail.

At the *common law*, if a parson, vicar, &c. had made a lease and resigned, the next incumbent might have entered immediately upon the lessee.

Stat. 28 H. 8.

By a statute made in 28 Hen. 8. the lessee may hold on his term for *six years*, if the parson that made his lease so long live, and the term were made for so long time; but upon such lease there must be so much rent reserved within *forty shillings* as such benefice is valued at in the *King's books*. See the *statute at large*.

By same statute, if a parson make a lease, and resign, and dies, the tenant shall hold out his lease for the year that was commenced at the time of his death, if the term were to have had so long continuance, if the parson had not died.

This seems only of such lands as are ploughed; for the succeeding parson is to have the parsonage-house and glebe, which is not sowed within a month after he is inducted, allowing a reasonable deduction for the rent reserved upon such lease.

In both cases the lessee must pay the reserved rent to the succeeding incumbent, who is enabled to sue or distrain for the same.

And such lease must be in writing under hand and seal, and not by parol.

Note. Statute 13 Eliz. has made this law of none effect.

As to bonds, covenants, premises, &c. are void within the statute of 18 Eliz.

Covenants,

Covenants, bonds, &c. made for the enjoying houses within cities, corporations, &c. are not void within this law; for this law makes no bonds, covenants, &c. void, which are not against the intent of this statute and the Statute 13 Eliz. cap. 10. but leases of houses and lands in cities, &c. by Statute 14 Eliz. cap. 11, are exempted out of 13 Eliz. cap. 10. and are not within Statute 18 Eliz.

A parson made a bond to resign upon request, and afterwards a lease to his patron of part of the glebe for twenty-one years. In an action brought upon this bond, the incumbent pleaded the Statute 18 Eliz. and averred, that this bond was made to secure this lease, and to compel the incumbent to reside, and adjudged a good plea, and an apt averment.

A parson made a lease, and in the lease covenanted not to be absent by the space of eighty days in any one year, and gave bond for the performance, and after became non-resident for eighty days; and resolved, that the bonds and covenants were both void.

A parson made a lease, and covenanted neither to do or suffer to be done, any matter, whereby the lease should become void, and after became non-resident by the space of eighty-days in a year, and this was held a good covenant; and a covenant, that the parson should be resident, was held not to be against this law, by Popham, Tanfield, and Clench, against Williams.

As to leases of colleges and hospitals,

It is to be observed, that they are not comprehended in the enabling stat. 32 H. 8. nor in any other statute, till the restrictive stat. 13 El. whereby (amongst the rest) the masters and fellows of colleges, and the masters and guardians of hospitals, are disabled to make any grants or conveyances of any of their possessions, other than for twenty-one years, or three lives, from the making of such lease, and not from the day of the date, or from the date, as has been said: and this must be of lands usually demised, and the accustomed rent, or more, must be reserved, with all the other qualifications mentioned before.

Stat. 18 Eliz.

There is a restriction upon colleges by the *statute 18 Eliz.* that upon all college leases, a third part of the ancient rent shall be reserved in wheat and malt, after the rate of *six shillings and eight-pence a quarter wheat, and five shillings a quarter malt*, to be delivered at the colleges; and in default of the delivery, to pay for the wheat and barley, after the rate the best wheat and malt shall be sold the next market-day, before the rent should have been paid; and for default of such reservation, the lease to be void; and the markets that are to set the prices are, *Oxford for Oxford, Cambridge for Cambridge, Windsor for Eaton, Winchester for Winchester.*

By *statute 18 Eliz.* they are restrained to make any concurrent leases till within three years of the end of the former terms that are in being.

As to what things are demisable within these several statutes, and what reservations are good, and in what case the acceptance of rent by the successor will make a lease good, that was voidable within these laws, and the several qualifications mentioned before.

One *Small* being possessed of the *manor of Paddington*, by a lease from a bishop of a term of years; the bishop made a lease to another for three lives, and before livery the tenant surrendered his former term; and it was held, that the surrender was made in due time, and the second lease good.

A prebend made a new lease without excepting the crab-trees, as was done in the former lease, reserving the ancient rent, with other due circumstances; and this lease was held void against the successor, by reason of the adding of the crab-trees.

It hath been adjudged, that a bishop, dean, &c. cannot grant the next avoidance of an advowson, nor any rent-charge out of the possessions of the church; but the same is void within the restrictive acts before mentioned, though these cannot be said to be any of the possessions of their churches.

It hath been held, that where a bishop demised a rectory for lives, and covenanted to discharge, save harmless, and indemnify, the lessee, &c. from all pensions, procurations, subsidies, and from all other payments of any sum of money, demands and duties whatsoever, ordinary or extraordinary, which shall be due and issuing out of the premises; that this covenant would not bind the successor, unless it had been in the ancient leases.

Hale, Chief Justice, was of opinion, that such covenant, though it had been in former leases, should not bind the successor for the royal aid, or any new charge by act of parliament.

A bishop may grant an ancient office, with the ancient fee, (if it be a necessary office, for the life of the officer;) but the bishops cannot grant such office to two, or in reversion.

A bishop cannot grant an annuity *pro confilio impenso et impendendo*, to bind his successor, though it be confirmed by the dean and chapter.

It hath been resolved, that a bishop of late erection may grant an office of necessity to one in possession for life, with a reasonable fee.

Note. These grants must be all confirmed by the dean and chapter, because they are not good within the Statute 32 Hen. 8.

Where offices have anciently been granted in reversion, they may still be granted in reversion, with confirmation.

If a bishop grant an ancient office with the ancient fee and more, and the grant be entire, (as where the ancient fee was five marks, and the new five pounds) it is void for all. But if it be several, (as five marks, and pasture for two horses) it is good for the ancient fee, and void for the other, *per Hutton and Yelverton, versus Crook and Harvey.*

If a copyhold escheator be forfeited, the bishop may grant it in fee by copy of court-roll, notwithstanding *statute 1 Eliz.*

It was also resolved, that where an archdeacon made a lease for three lives, warranted by the statutes before-mentioned, and the lessee granted a rent-charge for an hundred years, which was confirmed by the bishop, dean and chapter; that notwithstanding the same was void against the successor within *statute 13 Eliz. cap. 10.*

If a *writ of annuity* should be brought against a parson, &c. pretending the same due by prescription; and although the parson pray in aid of the patron and ordinary, and upon a plea pleaded by them, the plaintiff obtains verdict and judgment, and all this by practice and fraud to charge the glebe, it is void against the successor; for these statutes being made for the benefit of the church, the advancement of religion and hospitality, and to avoid dilapidations, shall always have a favourable construction.

It is regularly true, that where the wife, issue in tail, or successor, accepts the rent after the death of the husband, tenant in tail, or predecessor, upon a void lease made by the husband, tenant in tail, or predecessor, that such acceptance will not affirm the lease.

This rule must be understood of such a lease as is void *ipso facto*, without entry, or any other ceremony; and therefore if a parson, vicar, or prebend, &c. make a lease not warrantable by the statutes for twenty-one years, rendering rent, and dies, here no acceptance of rent by the successor, &c. will affirm this lease, because the same was void without entry, or other ceremony.

If a parson, vicar, or prebend, make a lease not warrantable within the before-mentioned statutes, for life or lives, reserving rent, and die, and the successor before entry accept the rent, this lease shall bind him for the time. For this being an estate of freehold, could not be void entry.

If a bishop, abbot, or prior, which have the inheritance in fee-simple in them, make a lease for lives or years, not warranted by the statutes before-mentioned, not being absolutely void by their deaths, but only voidable by the entry of the successor, if the successor accept the rent before entry, be it for lives or years, he affirms the lease for his life.

If a bishop make a lease not warranted by the statutes, rendering rent, and die, and his successor appoints his bailiff to collect his rents of that manor, who, amongst the rest, receives the rent reserved upon this demise, and accounts to the bishop's successor for it, this is a good acceptance, and shall bind the bishop for his time.

If a parson lease for life, not warranted nor confirmed, reserving rent, if his successor receive fealty of his tenant upon this lease, he has thereby affirmed the lease for his time: the like it will be if the successor bring an action of waste.

If a bishop make a lease of tythes, or other things not manurable for life or lives, rendering rent, and dies, and his successor accepts this rent, it will not affirm the lease.

Whether such acceptance upon a lease for years of tythes, &c. will bind the successor, seems yet a quære.

As to what leases or farms may or may not be taken.

By Statute 21 Hen. 8. it is, amongst other things, enacted, " That no spiritual person shall in his own name, or in the name of any other, take to farm any manors, lands, tenements, or hereditaments, upon the penalty of ten pounds for every month that he holds the same; nor by himself, nor any other, shall buy cattle, corn, lead, tin, hides, leather, tallow, fish, wool, wood, or any manner of victuals or merchandizes, to sell again for gain, upon pain to forfeit the treble value of things so bought."

A spiritual person may buy such things for his own use, and if they do not fit him, he may sell the same again; and so where he hath not sufficient glebe, he may take grounds for the maintenance of his family.

It is further enacted by the same Statute, "That no spiritual person beneficed with cure of souls shall farm the parsonage or vicarage of another to take any rent or profit out of such farm, upon the penalty of forty shillings a week, and ten times the value of the rent, or profit he shall take out of his farm,"

It is further enacted by the same statute, " That no spiritual person shall have or keep by himself, or any other, any tan-house or brew-house, other than for his own family, upon pain to forfeit ten pounds per mensem."

All which penalties are given to the king and informer, to be recovered in any of his majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no escoin, protection, or wager of law is to be admitted, &c.

Stat. 5 Geo. 3.
cap. 17.

By Statute 5. Geo. 3. cap. 17. a lease of tythes or other incorporeal hereditaments alone may be granted by any bishop, or any such ecclesiastical or eleemosynary corporation, and the successor shall be entitled to recover the rent by an action of debt, which (in case of a freehold lease) he would not have brought at the common law.

gained credit bin a chancery suit in 1327, when he was excommunicated, and was reduced to a simple citizen and not a member of any guild or corporation. And this history is in a certain book, written by **C H A P. viii.**

The manner of paying tythes, together with the sums payable by the respective parishes in London.

BY the several acts of the 27 H. 8. c. 20. 32 H. 8. c. 7. 2 & 3 Edw. 6. c. 13. and 7 & 8 W. c. 6. it is provided, that nothing therein shall extend to the city of London concerning any tythe, offering, or other ecclesiastical duty grown and due to be paid within the said city; because there is another order made for the payment of tythes and other duties there; which order is thus set forth: It appears by the records of the city of London, that Niger Bishop of London in 13 Hen. 3. made a constitution in confirmation of an ancient custom formerly used time out of mind, that provisions should be made for the ministers of London in this manner, that is to say, that he who paid the rent of twenty shillings for his house wherein he dwelt should offer every Sunday and every Apostle's day whereof the evening was fasted, one half-penny, and he that paid but ten shillings rent yearly should offer but one farthing; all which amounted to the proportion of two shillings and six-pence in the pound, for there were fifty-two Sundays, and eight Apostles days, the vigils of which were fasted. And if it chanced that one of the Apostles days fell upon a Sunday, then there was but one half-penny or farthing paid; so that sometimes it fell out to be somewhat less than two shillings and six-pence in the pound. And it appears by the book cases in the reign of Edward the Third, that the provision made for the ministers of London was by offerings and obventions; albeit the particulars are not assigned there, but must be understood according to the former ordinance made by Niger, and the payment of two shillings and six-pence in the pound, continuing until the 13 Rich. 2. Arundel, Archbishop of Canterbury, made an explanation of Niger's constitution, and thrust upon the citizens of London two and twenty more Saint days than were intended by the constitution made by Niger; whereby the offerings now amounted to the sum of three shillings

shillings and five-pence in the pound. And there being some reluctance by the citizens of *London*, Pope *Innocent* in 5 *H. 4.* granted his bull, whereby *Arundel's* explanation was confirmed; which confirmation (notwithstanding the difference between the ministers and citizens of *London*, about these two-and-twenty Saint days which were added to their number) Pope *Nicholas* also by his bull did confirm in 31 *Hen. 6.* against which the citizens of *London* did contend with so high a hand, that they caused a record to be made, whereby it might appear in future ages, that the order of explanation made by the Archbishop of *Canterbury* was done without calling the citizens of *London* unto it, or any consent given by them. And it was branded by them as an order surreptitiously and abruptly obtained, and therefore more fit to have the name of a destratory than a declaratory order. But notwithstanding this contention, the payment seems to have been most usually made according to the rate of *three shillings and five-pence in the pound*. For *Lyntwood*, who wrote in the time of *Hen. 6.* in his *Provincial Constitutions*, debating the question, whether the merchants and artificers of the city of *London* ought to pay any tythes, shews that the citizens of *London*, by an ancient ordinance observed in the said city, are bound every Lord's day, and every principal feast day, either of the Apostles or others, whose vigils are fasted, to pay *one farthing* for every *ten shillings* rent that they paid for their houses wherein they dwelt.

In 36 *Hen. 6.* there was a composition made between the citizens of *London* and the ministers, that a payment should be made by the citizens according to the rate of *three shillings and five-pence in the pound*; and if any house were kept in the proper hand of the owner, or were demised without reservation of any rent, then the church-wardens of the parish where the houses were, should set down a rate of the houses, and according to that rate payment should be made. After which composition so made, there was an act of common council made in 14 *Edw. 4.* in *London*, for the confirmation of the bull granted by Pope *Nicholas*. But the citizens of *London* finding, that by the common laws of the realm, no bull of the pope, nor arbitrary composition,

composition, nor act of common council could bind them in such things as concerned their inheritance; they still wrestled with the clergy, and would not condescend to the payment of the said *eleven pence* by the year, obtruded upon them by the addition of the *two-and-twenty Saint days*; whereupon there was submission to the Lord Chancellor, and divers others of the Privy Council, in the time of King *Hen. 8.* and they made an order for the payment of tythes according to the rate of *two shillings and nine-pence in the pound*; which order was first promulgated by a proclamation made, and afterwards established by an act of parliament made in 27 *Hen. 8. c. 21.* intitled, "An act for the payment of tythes within the city and suburbs of *London*, until another law and order shall be made and published for the same."

Ten years after this another law and order was made by the statute of 37 *Hen. 8. c. 12.* (intitled, "An act for tythes in *London*") as follows: "Whereas of late time contention, strife, and variance hath arisen and grown, within the city of *London* and the liberties of the same, between the parsons, vicars, and curates of the said city, and the citizens and inhabitants of the same, for and concerning the payment of tythes, oblations, and other duties within the said city and liberties: for appeasing whereof, a certain order and decree was made thereof by the most Reverend Father in God, *Thomas* Archbishop of *Canterbury*, *Thomas* *Audley*, Knight, Lord *Audley of Walden*, and then Lord Chancellor of *England*, now deceased, and other of the King's most Honourable Privy Council; and also the King's letters patent, and proclamation was made thereof, and directed to the said citizens concerning the same; whereupon it was after enacted in the parliament held at *Westminster* by prorogation the fourth day of *February*, in the twenty-seventh year of the King's most noble reign, that the citizens and inhabitants of the same city should, at *Easter* then next following, pay unto the curates of the said city and suburbs, all such and like sums of money for tythes, oblations, and other duties, as the said citizens and inhabitants, by the order of the said

" late

“ late Lord Chancellor, and other the King’s most Honourable Council, and the King’s said proclamation, paid, or ought to have paid, by force and virtue of the said order at *Easter* in the year 1535; and the same payments so to continue from time to time, until such time as any other order or law should be made by the King, and the two-and-thirty persons by the King to be named, as well for the full establishment concerning the payment of all tythes, oblations, and other duties of the inhabitants within the said city, suburbs, and liberties of the same, as for the making of other ecclesiastical laws of this realm of *England*; and that every person denying to pay as is aforesaid, should, by the commandment of the Mayor of *London* for the time being, be committed to prison, there to remain until such time as he should have agreed with the curate for his said tythes, oblations, and other duties, as is aforesaid, as in the said act more plainly appeareth; since which act divers variancies, contentions, and strifes, are newly risen and grown between the said parsons, vicars, and curates, and the said citizens and inhabitants, touching the payment of the tythes, oblations, and other duties, by reason of certain words and terms specified in the said order, which are not so plainly and fully set forth as is thought convenient and meet to be; for appealing whereof, as well the said parsons, vicars, and curates, as the said citizens and inhabitants have compromised, and put themselves to stand to such order and decree touching the premises as shall be made by the said Right Reverend Father in God, and the several other persons here under-mentioned, for a final end and conclusion to be had and made touching the premises for ever; and to the intent to have a full peace and perfect end between the said parties, his heirs and successors, touching the said tythes, oblations, and other duties, for ever, it is enacted, That such end, order, and direction as shall be made by the fore-named archbishop and the several other persons as aforesaid, or any six of them, before the first day of *March* next ensuing, concerning the payment of tythes, oblations, and other duties within the said city and the liberties thereof,

“ thereof, and inrolled of record in the High Court
“ of Chancery, shall stand, remain, and be as an act
“ of parliament, and shall bind as well all citizens and
“ inhabitants of the said city and liberties, for the
“ time being, as the said parsons, vicars, curates, and
“ their successors for ever, according to the effect,
“ purport and intent of the said order and decree so
“ to be made and inrolled ; and that every person
“ denying to pay any of his tythes, oblations, or
“ other duties contrary to the said decree so to be
“ made, shall, by the commandment of the Mayor of
“ London for the time being, and in his default or
“ negligence, by the Lord Chancellor of England for
“ the time being, be committed to prison, there to re-
“ main till such time as he hath agreed with the
“ curate for the same.”

Which decree made in pursuance hereof, is as follows, viz. “ As touching the payment of tythes
“ in the city of London, and the liberties of the
“ same, it is fully ordered and decreed by the most
“ Reverend Father in God, Thomas Archbishop of
“ Canterbury, primate and metropolitan of England,
“ Thomas Lord Wriothesly, Lord Chancellor of Eng-
“ land, William Lord St. John, president of his
“ Majesty’s council, and lord great master of his Ma-
“ jesty’s household, John Lord Russel, lord privy seal,
“ Edward Earl of Hertford, lord great chamberlain
“ of England, John Viscount Lisle, high admiral of
“ England, Richard Lister, Knight, chief justice of
“ England, and Roger Cholmly, Knight, chief baron
“ of his Majesty’s Exchequer, this twenty-fourth day
“ of February, in the year of our Lord, 1545, accord-
“ ing to the statute in such case lately provided, that
“ the citizens and inhabitants of the said city and li-
“ berties thereof for the time being, shall yearly, with-
“ out fraud or covin, for ever pay their tythes to the
“ parsons, vicars, and curates of the said city, and
“ their successors for the time being, after the rate
“ hereafter following ; that is to wit, of every *ten shillings*
“ rent by the year, of all houses, shops, ware-
“ houses, cellars, stables, and every of them, within
“ the said city and liberty thereof, *sixteen-pence half-
“ penny*, and of every *twenty shillings* rent by the year
“ two

“ two shillings and nine-pence, and so above the rent of
 “ twenty shillings by the year, as ending from ten shil-
 “ lings to ten shillings, according to the rate afore-
 “ said.”

Item, “ That where any lease is or shall be made
 “ of any dwelling-house or houses, shops, ware-
 “ houses, cellars, or stables, or any of them, by fraud
 “ or covin, reserving less rent than hath been accus-
 “ tomed, or is, or where any such lease shall be made
 “ without any rent reserved upon the same by reason
 “ of any fine or income paid before hand, or by any
 “ other fraud or covin; in every such case the tenant
 “ or farmer shall pay for his tythes of the same after
 “ the rate aforesaid, according to the quality of such
 “ rents as the same were last letten for, without fraud
 “ or covin, before the making of such lease.”

Item, “ That every owner or inheritor of any dwel-
 “ ling-house or houses, shops, warehouses, cellars,
 “ or stables, inhabiting or occupying the same him-
 “ self, shall pay after such rate, according to the quan-
 “ tity of such yearly rent as the same was last letten
 “ for, without fraud or covin.”

Item, “ If any person hath taken, or hereafter shall
 “ take, any mease or mansion-place by lease, and the
 “ taker thereof, his executor or assigns doth, or shall
 “ inhabit in any part thereof, and hath within eight
 “ years last past before this order, or hereafter shall let
 “ out the residue of the same; in such case the prin-
 “ cipal farmer or farmers, or first taker or takers
 “ thereof, their executors or assigns shall pay their
 “ tythes after the rate aforesaid, according to the
 “ quantity of their rent by the year.”

“ And if any person shall take divers mansion-
 “ houses, shops, warehouses, cellars, or stables, in
 “ one lease, and shall let out one or more of them,
 “ and shall keep one or more in his own hands, and
 “ inhabit in the same, the said taker and his execu-
 “ tors or assigns shall pay their tythes after the rate
 “ aforesaid, according to the quantity of the yearly
 “ rent of such mansion-house or houses retained in his
 “ own

“ own hands ; and his assignees of the residue of the
“ said mansion-house or house shall pay their tythes
“ after the rate abovesaid according to the quantity of
“ their yearly rents.”

Item, “ If such farmer or farmers, or his or their
“ assigns of any mansion-house or houses, ware-
“ houses, shops, cellars, or stables, hath at any time
“ within eight years last past, or shall hereafter let
“ over all the said mansion-house or houses contained
“ in his or their lease to one or more persons, the in-
“ habitants, lessees, or occupiers thereof, shall pay
“ their tythes after the rate of such rents as the inha-
“ bitants, lessees, or occupiers, and their assigns, have
“ been, or shall be charged withal, without fraud or
“ covin.”

Item, “ If any dwelling-house within eight years
“ last past, was, or hereafter shall be, converted into
“ a warehouse, storehouse, or such like, or if a ware-
“ house, storehouse, or such like, within the said
“ eight years, was, or hereafter shall be converted
“ into a dwelling-house, the occupier thereof shall
“ pay tythes for the same after the rate above declared
“ of mansion-house rents.”

Item, “ That where any person shall demise any
“ dyehouse or brewhouse, with implements conveni-
“ ent or necessary for dying or brewing, reserving
“ a rent upon the same, as well in respect of such
“ implements as in respect of such dyehouse or brew-
“ house, the tenant shall pay his tythes after such
“ rate as is abovesaid, the third penny abated; and
“ every principal house or houses, with key or wharf
“ having any crane or gibbet belonging to the same,
“ shall pay after the like rate of their rents as is afore-
“ said, the third penny abated; and other wharfs be-
“ longing to houses having no crane or gibbet, shall
“ pay for tythes as shall be paid for mansion-houses in
“ form aforesaid.”

Item, “ That where any mansion-house, with a
“ shop, stable, warehouse, wharf with crane, timber-
“ yard, teinter-yard, or garden belonging to the same,
“ or

“ or as a parcel of the same, is or shall be occupied together, if the same be hereafter severed or divided, “ or at any time within eight years last past were severed “ or divided; then the farmers or occupiers thereof “ shall pay such tythes as is above said, for such shops, “ stables, warehouses, wharf with crane, timber-yard, “ tenter-yard, or garden aforesaid, so severed or di- “ vided, after the rate of their several rents thereupon “ reserved.

Item, “ That the said citizens and inhabitants shall “ pay their tythes quarterly; that is to say, at the Feast “ of *Easter*, the Nativity of *St. John Baptist*, the Feast “ of *St. Michael the Archangel*, and the Nativity of our “ Lord, by even portions.

Item, “ That every householder paying 10*s.* rent, or “ above, shall for him or herself be discharged of their “ four offering days; but his wife, children, servants, “ or other of their family taking their rights of the “ church at *Easter*, shall pay 2*s.* for their four offering “ days yearly.

“ PROVIDED ALWAYS, and it is decreed, that if “ any house, which hath been or hereafter shall be “ letten for ten *shillings* rent by the year, or more, be “ or hath been at any time within eight years last past, “ or hereafter shall be divided and leased into small “ parcels or members, yielding less yearly rent than “ ten *shillings* by the year; the owner, if he shall “ dwell in any part of such house, or else the prin- “ cipal lessee (if the owner do not dwell in some part “ of the same) shall pay for the tythes after such “ rate of rent as the same house was accustomed to “ be letten for before such division or dividing into “ parts or members, and the under farmers and “ lessees to be discharged of all tythes for such small “ parcels, parts, or members, rented at less yearly “ rent than ten *shillings* by the year, without fraud or “ covin, paying two-pence a-piece yearly for four offer- “ ing days.

“ PROVIDED ALWAY, and it is decreed, That for “ such gardens as appertain not to any mansion-house, “ and

Of the Manner of paying Tythes in London.

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“ and which any person holdeth in his hands for pleasure, or to his own use; the person holding the same shall pay no tythes for the same; but if any person which shall hold any such garden, containing half an acre or more, shall make any yearly profit thereof by way of sale, he shall pay tythes for the same after such rate of his rent as is herein first above specified.”

“ PROVIDED ALSO, That if any such gardens, now being of the quantity of half an acre, or more, be hereafter by fraud or covin divided into less quantities, then to pay according to the rate above-said.”

“ PROVIDED ALWAYS, That this decree shall not extend to the houses of great men or noblemen, or noblewomen, kept in their own hands, and not letten for any rent, which in times past have paid no tythes, so long as they shall so continue unletten; nor to any halls of crafts or companies, so long as they be kept unletten, so that the same halls in time past have not used to pay any tythes.”

“ PROVIDED ALWAYS, and it is decreed, That this present order and decree shall not in any wise extend to bind or charge any sheds, stables, cellars, timber-yards, nor teinter-yards, which were never parcel of any dwelling-house, nor belonging to any dwelling-house, nor have been accustomed to pay any tythes; but that the said citizens and inhabitants shall thereof be quit of payment of any tythes, as it hath been used and accustomed.”

“ PROVIDED ALSO, and it is decreed, That where less sum than after sixteen-pence half-penny in the ten shillings rent, or less than two shillings and nine-pence in the twenty shillings rent, hath been accustomed to be paid for tythes; in such places the said citizens and inhabitants shall pay but only after such rate as hath been accustomed.”

Item, “ It is also decreed, That if any variance, controversy or strife shall arise in the said city for

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“ non-

“ non-payment of any tythes; or if any variance or
 “ doubt shall arise upon the true knowledge or division
 “ of any rent or tythes within the liberties of the said
 “ city, or of any extent of assessment thereof; or if
 “ any doubt arise upon any other thing contained
 “ within this decree, then upon complaint made by
 “ the party grieved to the mayor of the city of *London*
 “ for the time being, the said mayor, by the advice of
 “ counsel, shall call the parties before him, and make
 “ a final end in the same, with costs to be awarded
 “ by the discretion of the said mayor and his assistants,
 “ according to the intent and purport of this present
 “ decree.”

“ And if the mayor shall not make an end thereof
 “ within *two months* after complaint to him made;
 “ or if any of the said parties find themselves aggrieved,
 “ the Lord Chancellor of *England* for the time
 “ being, upon complaint to him made, within *three*
 “ *months* then next following, shall make an end in
 “ the same, with such costs to be awarded as shall be
 “ thought convenient, according to the intent and
 “ purport of the said decree.”

“ PROVIDED ALWAYS, That if any person take
 “ any tenement for a less rent than it was accustomed
 “ to be letten for, by reason of great ruin or decay,
 “ burning, or such like occasions or misfortunes;
 “ such person, his executors or assigns, shall pay tythes
 “ only after the rate of the rent reserved in his lease,
 “ and none otherwise, as long as the same lease shall
 “ endure.”

Of every ten shillings rent by the year.] See sect. 2. of
 the foregoing decree. It was resolved in the case of
Meadhouse against Taylor, that a rent for half a year,
 and afterwards for another half year, is a yearly rent,
 or a rent by the year within the meaning of this decree.
Vide Noy 130. Gibs. Cod. 1221.

Of all houses.] In the case of Green v. Piper, East. 34
 Eliz. it was suggested, in order to hinder the granting
 of a consultation, that the house belonged to a priory
 which was discharged of tythes by bull. But the
 court replied, that by the *common law* houses paid no
 tythes;

tythes; and the right in the present case subsisting immediately on this statute, which lays them upon every house; no exemption shall be allowed but to such houses as are specially exempted by the statute itself. *Vide Cro. Eliz. 276. Mo. 912. Gibs. Cod. 1221.*

By reason of any fine or income paid beforehand, or by any other fraud or covin.] See sect. 3. of the said decree. M. 5 Ja. between Skidmore and Eire, plaintiffs, in the prohibition against Bell, parson of St. Michael, Queenhithe, in London. The case was this: the said parson libelled before the chancellor of London for the tythes of an house called the Boar's Head in Bread-street in the said parish, the ancient farm-rent whereof was five pounds at the time of the said decree and after; and that of late a new lease was made of the said house, rendering the rent of five pounds a year, and over that a great income or fine, which was covenanted and agreed to be paid yearly at the same day; that the rent was paid as a sum in gross, and that so much rent might have been reserved for the said house as the rent reserved and the sum in gross amounted unto: which reservation and covenant were made to defraud the said parson of the tythes of the true rent of the said house, which to him did appertain by the purport and true intention of the said decree; and in this case four points were resolved by the court: 1. If so much rent be reserved, as was accustomed to be paid at the making of the said decree. (whatsoever fine or income be paid) that the parson can aver no covin; for the words of the decree be, "Where any lease is or shall be made of any dwelling-house by fraud or covin in reserving less rent than hath been accustomed:" so as if the accustomed rent be reserved, no fraud can be alleged; for the fraud by the decree is, when lesser rent than was then accustomed to be paid is reserved, or if no rent at all be reserved, for then tythe shall be paid according to the rent that then was last before reserved to be paid, so as the decree consisteth upon four points; first, where the accustomed rent was reserved; secondly, where the rent was increased, then the tythes should be paid according to the whole rent; thirdly, where lesser rent was reserved; and fourthly, where

no rent was reserved, but had been formerly reserved. And this act and decree were very beneficial for the clergy of London, in respect of that which they had before. And the defendant in his libel confesseth that the accustomed rent was reserved; and therefore no cause of suit. 2. It was resolved, That as to such houses as were never letten to farm, but inhabited by the owner, this is *casus omisus*, and shall pay no tythes by force of the decree. 3. It was resolved, that where the decree saith, “ Where no rent is reserved by reason of any fine or income paid beforehand :” albeit no fine or income be paid in that case, yet if no rent be reserved, the parson shall have his tythes according to the decree; for that is put but for an example or cause why no rent is reserved; and whether any fine or income were paid or no, is not material as to the parson. 4. It was resolved, That the parson could not sue for the said tythes in the *ecclesiastical* court; for that the act and decree that raised and gave these kind of tythes did limit and appoint how and before whom the same should be sued for, and did appoint new and special judges to hear and determine the same; and in the end it was awarded that the prohibition should stand. *Vide 2 Inst. 660.*

*Upon complaint made.] See sect. 19. of the foregoing decree. In the aforesaid case of Meadhouse v. Taylor, it was held by the court that the complaint ought to be in writing (and not by word of mouth only) in nature of a *monstrans de droit*, declaring all the title. Vide Nov 130. Gibs. Cod. 1223.*

*To the mayor.] Pursuant to the aforesaid case of Skidmore v. Eire, diverse prohibitions have been granted (when tythes were sued for upon this statute) to the *ecclesiastical* court. But when it was pleaded in the year 1658, that the right of tythes, upon the foundation of this act, could not be cognizable in the *Exchequer*, by reason of the provision therein made for determining of all controversies before the lord mayor or lord chancellor; it was held clearly by the barons, that the court of *Exchequer* had jurisdiction in the cause, because the act had no negative words in it. Upon which I shall only observe, says Dr. Gibson, that if affirmative*

affirmative words will not exclude the temporal court, it may be hard to find a good reason why, according to the foregoing judgments, they should exclude the spiritual court. *Vide Gibs. 1223.*

On a Bill for tythe of houses not within the city of London, and so not within *statute 37 Hen. 8.* It was admitted by the plaintiff, that this demand was against common right, and he did not allege this payment to be either by custom or prescription, but that this was the only provision for St. Saviour's, Southwark, in right of which church the plaintiff claimed: it was proved that the houses in the parish had, since the year 1653, generally paid twelve shillings per annum; but no proof that the defendant's house had paid for twenty-five years, but by one single witness; yet the court decreed an account without directing an issue. *Vide Bunn. Rep. 102. Hil. 1721.*

On a bill by the vicar of Cripplegate for two shillings and nine-pence per pound, according to the rent of the houses, pursuant to the decree and *statute 27 Hen. 8.* and to support the jurisdiction of this court (the statute giving power to the lord mayor of London to determine, &c.) the following cases were cited, *Hard. 116. 2 Inst. 660. Lit. Rep. 102. 141. Degge 351. Watson 387. Cro. Car. 596. Hob. 11.* Several instances were given, where the two shillings and nine-pence per pound had been decreed, as the case of St. Bride's, Townley v. Wilson, Mich. 1705; Sawyer v. Montford, 1694; Grant v. Cannon, Mich. 5. W. & M. Sheffield v. Serjeant, 1658; St. Swithin's, Humfreville v. Plumsted; Aldgate parish, 21 Car. the difficulty was, that here appeared to have been paid from time to time several payments, as ten shillings for T.'s house, six shillings for Borkett's, and four shillings for Whicett's, and the charges in the vicar's books appeared to be the same, though in some of them the payments sometimes varied, and the right of the vicar cannot be destroyed but by an uniform constant payment. (See the statute.) This being a thing of great consequence, the court took time to consider of this decree.

In Michaelmas term, 1722, the court gave judgment: Baron Price held, that there ought to be a general decree for the plaintiff; Mountague, Page, and Gilbert directed an issue to try whether there had been such customary payments as was set up by defendants; and a verdict was for the defendants. From this decree Bennet appealed, and the decree was confirmed. *Vide Bunb. 106, 107. Pasch. 1722. Doctor Bennett v. Treppas & al.*

An issue was directed in this cause, to try whether there had been any variation in the payment of tythes, or sums of money in lieu of them, for houses in London, according to Statute 37 Hen. 8. It was now moved, that the plaintiff should produce at the trial the books of the former rectors; and although it was objected, that these were properly private books, and the plaintiff's own evidence, yet as they had before been produced at the hearing of the cause, and as the issue to be tried is to inform the conscience of the court, the jury ought to have all the lights the court can give them: *Per curiam*, the plaintiff was ordered to produce these books at the trial. *Vide Bunb. 143.*

After all, notwithstanding the settlement by the aforesaid decree, divers prescriptions for the payment of lesser rates than the parsons might require by the said settlement, (as to pay *ten shillings* for the tythe of an house, although the rent thereof was *forty pounds* a year or more) have been gained and allowed. But upon the occasion of the fire of London in the year 1666, as to the churches and houses thereby consumed, another statute was made, namely *stat. 22 & 23 C. 2. c. 15.* (intitled, *An act for the better settlement of the maintenance of the parsons, vicars, and curates, in the parishes of the city of London*) which is as follows: "Whereas the tythes in the city of London were less vied and paid with great inequality, and are, since the late dreadful fire there, in the rebuilding of the same, by taking away some houses, altering the foundation of many, and the new erecting of others, so disordered, that in case they should not for the time to come be reduced to a certainty, many controversies and suits of law might thence arise; it is therefore

“ therefore enacted, that the annual certain tythes
 “ of the parishes within the said city and liberties
 “ thereof, whose churches have been demolished, or
 “ in part consumed in the late fire; and which said
 “ parishes, by virtue of an act of this present parlia-
 “ ment, remain and continue single, as heretofore
 “ they were, or are by the said act annexed or united
 “ into one parish respectively, shall be as follows:
 “ that is to say, the annual certain tythes, or sum of
 “ money in lieu of tythes;” of

| | £. s. | List of parishes as regulated, un- der Stat. 23 & 23 Car. 2. as to tythes. |
|--|--------|--|
| The parish of Alhallows, Lombard-street | 110 0 | |
| St. Bartholomew, Exchange | 100 0 | |
| St. Bridget, alias Brides | 120 0 | |
| St. Bennet Finck | 100 0 | |
| St. Michael, Crooked-lane | 100 0 | |
| St. Christopher | 120 0 | |
| St. Dionis Backchurch | 120 0 | |
| St. Dunstan in the East | 200 0 | |
| St. James, Garlick-hythe | 100 0 | |
| St. Michael, Cornhill | 140 0 | |
| St. Michael, Bassishaw | 132 11 | |
| St. Margaret, Lothbury | 100 0 | |
| St. Mary, Aldermanbury | 150 0 | |
| St. Martin, Ludgate | 160 0 | |
| St. Peter, Cornhill | 110 0 | |
| St. Stephen, Coleman-street | 110 0 | |
| St. Sepulchre | 200 0 | |
| St. Alhallows, Bread-street, and St. John Evangelist | 140 0 | |
| Alhallows the Great and Alhallows the Less | 200 0 | |
| St. Alban, Wood-street, and St. Olives, Silver-street | 170 0 | |
| St. Anne and Agnes, and St. John Zachary | 140 0 | |
| St. Augustine, and St. Faith | 172 0 | |
| St. Andrew Wardrobe, and St. Anne, Black- friars | 140 0 | |
| St. Antholin, and St. John Baptist | 120 0 | |
| St. Bennet, Grace-church, and St. Leonard, East-cheap | 140 0 | |
| St. Bennet, Paul's wharf, and St. Peter's, Paul's wharf | 100 0 | |
| Christ-church, and St. Leonard, Foster-lane | 200 0 | |

| | | £. | s. |
|--|---|-----|----|
| St. Edmund the King, and St. Nicholas Acons | — | 180 | 0 |
| St. George, Botolph-lane, and St. Botolph, Billingsgate | — | 180 | 0 |
| Lawrence Jury, and St. Magdalen, Milk- street | — | 120 | 0 |
| St. Magnus, and St. Margaret, New Fish- street | — | 170 | 0 |
| St. Michael Royal, and St. Martin, Vintry | — | 140 | 0 |
| St. Matthew, Friday-street, and St. Peter Cheap | — | 150 | 0 |
| St. Margaret Pattons, and St. Gabriel Fen- church | — | 120 | 0 |
| St. Mary at Hill, and St. Andrew Hubbard | — | 200 | 0 |
| St. Mary Woolnoth, and St. Mary Wool- church | — | 160 | 0 |
| St. Clement Eastcheap, and St. Martin Or- gars | — | 140 | 0 |
| St. Mary Ab-church, and St. Lawrence Pountney | — | 120 | 0 |
| St. Mary Aldermary, and St. Thomas A- postle | — | 150 | 0 |
| St. Mary le Bow, St. Pancras, Soper-lane, and Alhallows, Honey-lane | — | 200 | 0 |
| St. Mildred Poultry, and St. Mary Cole- church | — | 170 | 0 |
| St. Michael Wood-street, and St. Mary Staining | — | 100 | 0 |
| St. Mildred, Bread-street, and St. Margaret Moses | — | 130 | 0 |
| St. Michael, Queenhithe, and Trinity | — | 160 | 0 |
| St. Magdalen, Old Fish-street, and St. Gre- gory | — | 120 | 0 |
| St. Mary Somerset, and St. Mary Moun- thaw | — | 110 | 0 |
| St. Nicholas, Cole-abbey, and St. Nicholas, Olaves | — | 130 | 0 |
| St. Olave, Jewry, and St. Martin, Iron- monger-lane | — | 120 | 0 |
| St. Stephen, Walbrook, and St. Bennet, Sheerhog | — | 100 | 0 |
| St. Swithin, and St. Mary Bothaw | — | 140 | 0 |
| St. Vedast alias Foster's, and St. Michael Quern | — | 160 | 0 |

Sect. 3. Which respective sums of money to be paid in lieu of tythes within the said respective parishes, and assessed as herein after is directed, shall be the respective certain actual annual maintenance (over and above glebes and perquisites, gifts and bequests, to the respective parson, vicar, and curate of any parish for the time being, or to their successors respectively, or to others for their use) of the said respective parsons, vicars, and curates, who shall be legally instituted, inducted, and admitted into the respective parishes aforesaid.

Sect. 4, 5, 6, 7. And for the more equal levying of the same upon the several houses, buildings, and other hereditaments within the respective parishes, assessments were ordered to be made before July 24, 1671, upon all houses, shops, warehouses, and cellars, wharfs, keys, cranes, water-houses, tofts of ground (remaining unbuilt) and all other hereditaments whatsoever (except parsonage and vicarage houses) the whole respective sum by this act appointed, or so much of it as is more than what each impropriator is by this act enjoined to allow.

Sect. 8. And three transcripts of the assessments were to be made; one to be deposited amongst the records of the city, another in the registry of the bishop of London, and another in the parish vestry respectively, for a perpetual memorial thereof.

Sect. 9. The sums assessed to be paid to the respective parsons, vicars, and curates, at the four most usual feasts, to wit, at the Annunciation of the Blessed Virgin, the Nativity of St. John Baptist, the Feast of St. Michael the Archangel, and the Nativity of our Blessed Saviour, or within fourteen days after each of the feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time as the incumbent shall begin to officiate or preach as incumbent.

Sect. 10. Impropriators shall pay what *bona fide* they have used and ought to pay to the respective incumbents at any time before the said late fire; the same to be

be computed as part of the maintenance of such incumbent.

Sect. 11. And if any inhabitant shall refuse or neglect to pay the incumbent the sum appointed by him to be paid, (the same being lawfully demanded upon the premises;) it shall be lawful for the lord mayor, upon oath to be made before him of such refusal or neglect, to grant our warrants for the officer or person appointed to collect the same, with the assistance of a constable, in the day-time, to levy the same by distress and sale of the goods of the party so refusing or neglecting; restoring to the owner the overplus over and above the said arrears, and the reasonable charges of making such distresses.

Sect. 12. And if the lord mayor shall refuse or neglect to execute any of the powers to him given by this act; it shall be lawful for the lord chancellor or lord keeper, or two or more of the barons of the Exchequer, by warrant under their hands and seals respectively, to do and perform what the said lord mayor might or ought to have done in the premises.

Sect. 14. Provided that no court or judge, ecclesiastical or temporal, shall hold plea of or for any the sum or sums of money due and owing, or to be paid by virtue of this act; other than the persons hereby authorized to have cognizance thereof: nor shall it be lawful to, or for any parson, vicar, curate, or incumbent, to convene or sue any person assessed as aforesaid, and refusing or neglecting to pay the same, in any court or courts, or before any judge or judges, other than what are authorized and appointed by this act for the hearing and determining of the same, in manner aforesaid.

Sect. 15. PROVIDED ALSO, that it shall be lawful for the wardens and minor canons of St. Paul's, parsons and proprietors of the rectory of the parish of St. Gregory aforesaid, to receive and enjoy all tythes, oblations, and duties, arising or growing due within the said parish, in as large and beneficial manner as formerly they have or lawfully might have done.

And

And for the better recovering the sums of money which shall be due according to the directions of this act, and for the levying of arrears where the occupier removes from the premises, or the houses have stood empty, a decree was made in the year 1713, by *Harcourt*, chancellor, assisted by the barons *Bury* and *Price*, in the case of *Savage v. Wood*, clerks, against *Harding and others*. *Vide Shaw's Par. L. 45.*

The Statutes concerning building fifty new churches in or near London and Westminster, and providing for the ministers thereof, are as follows:

Stat. 9 Ann. cap. 22. sect. 2. The money arising by the duty on coals imported into the *Thames*, of two shillings per chaldron from 14th *May* 1716, and three shillings till 28th *Sept.* 1724, is to be paid into the *Exchequer*, and appropriated for building fifty new churches, of stone and other materials, with towers or steeples to each, and for purchasing sites of churches and church-yards, and burying-places, in or near *London* and *Westminster*, and for making such chapels, as are capable thereof, parish churches; and for purchasing houses for ministers, and for applying 4000*l.* per ann. out of the said duties, towards repairing the collegiate church of *St. Peter, Westminster*, and 6000*l.* per ann. towards the finishing *Greenwich hospital*.

Sect. 3. There shall be fifty churches built, whereof one shall be in the parish of *Greenwich*.

Sect. 4. Chapels already built, if fit, may be converted into parish churches.

Sect. 5. The queen, by letters patent, may nominate commissioners, who shall inform themselves in what parishes the new churches are most necessary to be built, and of proper places to build them, and of church-yards and burying-places to be bought; and shall limit the distinct parishes, &c.

Stat. 10. Ann. c. 11. sect. 1. The commissioners for fifty new churches, or any five of them, are required to

Stat. 10 Ann. cap. 11. sect. 1.

The Law of Tythes.

to meet as often as they shall have occasion, for building fifty new churches.

Sect. 2. The commissioners may purchase lands, &c. as they shall think proper for the said new churches, and for church-yards, and for ministers houses.

Sect. 3. The lands so purchased shall be conveyed to five or more of the commissioners and their heirs, and they are to cause the churches to be built, and chapels already built to be made parish-churches, and to provide houses for ministers; and church-yards to be made and inclosed.

Sect. 4. They may provide more than one cemetery for any new parish-church, and without the bounds of the parish; and the ground purchased for that purpose shall be taken as part of the parish, after the purchase and consecration thereof, and shall be discharged from any rates to the other parish out of which it was taken.

Sect. 7. The treasury may issue out of the money arising by virtue of this or the former act of *Anne*, c. 22. such sums as five of the commissioners shall think necessary for purchasing lands, &c. which money shall be paid to such person as the crown shall appoint treasurer thereof, not being a commissioner; and shall be accounted for by such treasurer, and disbursed according to such orders as he shall receive from the commissioners for the said uses; such treasurer to be accountable to the Exchequer, and to give security approved of by the treasury.

Sect. 8. The commissioners may, by a parchment writing inrolled in *Chancery*, ascertain the bounds of the site of each new church, and minister's house and church-yard, and also the district of each parish for every new church; and after the inrolment of such writing and consecration of the church, such district shall be a distinct parish, except touching rates, reliefs for the poor, and rates for the highways.

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Sect. 9. The commissioners may, by writing inrolled in *Chancery*, take a part of any of the large parishes in and about *London* and *Westminster*, where any new church shall be made, and unite the same to any other lesser parish next adjoining, wherein a church is already built.

Sect. 10. There shall be a rector in every new church, and where there is a morning preacher in any chapel which shall be converted into a parish-church, such preacher shall, after the consecration, be the first rector, without any admission, institution, or induction; and in every new church, the first rector shall be appointed by the queen; and he and his successors are incorporated, and shall be called the rector of such new church, by the name that shall be given to it in the act of consecration; and the freehold of the new church, &c. shall be in him and his successors; and he and they may purchase lands, not exceeding the yearly value of 200*l.* for each church.

Sect. 11. The commissioners may enquire of the right of patronage, &c. of any church from which any part shall be taken as aforesaid, and treat with the person who hath the right, for the dividing such parish, and the tythes and dues thereunto belonging, to take effect after the first voidance, and for settling the right of patronage of each new church.

Sect. 12. Such settlement shall bind infants, &c.

Sect. 14. Until such settlement can be made of the right of patronage in every new parish, the crown shall present upon any avoidance.

Sect. 15. The rectors of every new church (except the present preacher in a chapel) shall be presented, instituted, collated, and inducted, as other rectors are; and they and the churchwardens shall be subject to the ordinary.

Sect. 16. This act shall not deprive the successors of the rectors or vicars of the parish-churches, out of which any part shall be taken, of any tythes, or other profits,

profits, until such agreement for dividing the parish be made and inrolled.

Sect. 17. This act shall not prejudice any proprietor of a chapel made a parish-church, or his interest in any pews, without his consent under hand and seal.

Sect. 18. If any proprietor shall sell his interest in a pew in any chapel, it shall be sold only to an inhabitant of the parish.

Sect. 19. The first church-wardens, overseers of the poor, and surveyors, and other parish officers, of every new parish, shall be elected by the commissioners, out of the inhabitants, within a month after the consecration of the church; and all succeeding parish officers shall be chosen and sworn yearly in every new parish, according to law.

Sect. 20. The commissioners, with the consent of the ordinary, may, by writing inrolled in *Chancery*, name a number of the inhabitants of each new parish to be vestrymen, who shall have the same power as the vestrymen of the parish out of which the new parish is taken; and if there are no select vestrymen in that parish, then as the vestrymen of the parish of *St. Martin in the Fields* in *Middlesex* now have; and upon the death or removal, &c. of any vestryman, the rest may chuse another, being an inhabitant and householder.

Sect. 21. All parochial customs, &c. used in any parish shall, notwithstanding such division, continue in both parishes.

Sect. 22. The commissioners, with the consent of the ministers, churchwardens and overseers of the poor, and of the vestry, or of twenty of the principal inhabitants where there is no select vestry, from which parish any part shall be taken, and of the parish to which it shall be appointed, or else the respective ministers, parish officers, vestrymen or principal inhabitants, with consent of the ordinary, by writing inrolled in *Chancery*, may make a perpetual division of such parishes as to church rates, the poor, highways, and other

other parish rates ; and may settle any annual sum, or consideration in respect thereof, or for equality of such division.

~~already written~~
Sect. 23. Until such agreement shall be made, the parish rates shall be assessed and levied through all parts which belong to such present parish.

Sect. 24. The parish officers, with the vestry or principal inhabitants of each parish, may meet every year on *Tuesday in Easter week*, or oftener, upon notice given on the *Sunday* before, and after morning service assess the rates for the poor, &c. and other parish rates, and apportion the said rates upon every part of such present parish so divided ; which rates shall be assessed and collected in each district by the proper officers, who shall distribute the rates in reasonable proportions for every district, for the relief of the poor, &c. and other parish rates within such district.

Sect. 25. When such yearly agreements shall not be made for distributing such rates, the parish officers for the district then remaining to such present church may assess and collect of the inhabitants, through the limits of such parish, all rates and taxes, as they might have done before any division.

Sect. 26. This act shall not invalidate any ecclesiastical law of the church of *England*, or destroy any of the rights of the bishop of *London*, or any other local ordinary, or any archdeacon, chancellor or official.

Sect. 27. He and they may visit, institute and exercise ecclesiastical jurisdiction in all parishes to be erected or divided, as in any other parish.

Sect. 30. The monies, to be issued in pursuance of this and the former act for building churches, shall be issued without fee.

Sect. 31. No burial shall be in or under any of the churches intended to be built. And the commissioners

may settle what sum shall be paid to the rector and church-officers for burials in the church-yards.

Stat. 12 Ann. cap. 17. sect. 2. The new church in the *Strand*, after it is finished, shall be deemed one of the fifty churches to be built in pursuance of the act 9 *Ann. cap. 22*, &c.

Sect. 4. In every new church to be erected in pursuance to the act 10 *Ann. cap. 11.* within *Stepney* parish, the first rector shall be nominated by the principal and scholars of *Brazen Nose College* in *Oxford*, and in every chapel in the same parish which shall be converted into a parochial church.

Stat. 1 Geo. 1. cap. 23. sect. 2. All monies which shall be raised by the duty of three shillings per chalder upon coals imported into the *Thames*, from the 27th of September 1724, to the 28th of September 1729, by virtue of this act, shall be brought into the *Exchequer*; and are appropriated for the providing maintenances for the ministers in the new churches to be erected in and about *London* and *Westminster*, and shall be issued in such manner as shall be directed by parliament.

Sect. 4. The King may by letters patent appoint commissioners, who, or any five of them, shall have power to execute all the powers, &c. in the said acts; and also to inform themselves in what manner a due maintenance may be provided for the said ministers.

Stat. 4 Geo. 1. cap. 14. sect. 1. *Stat. 4 Geo. 1. c. 14. sect. 1.* The commissioners appointed by virtue of the two acts 9 *Ann. cap. 22.* and 10 *Ann. cap. 11.* shall cause the church of *St. Giles's in the Fields* to be rebuilt; and the said church shall be taken as one of the fifty new churches.

Sect. 2. The profits of the fourth gallery shall be applied to the use of the poor of the said parish.

Stat. 5 Geo. 1. cap. 9. sect. 4. All the monies arising by the duties on coals imported into the port of *London* after *Lady-day 1719*, and before *Lady-day 1751*, shall

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shall be paid into the Exchequer, and appropriated to the several uses in this act prescribed.

Sect. 5. For raising the sum of 360,000*l.* in such proportions as shall be needful for building the said churches, a yearly fund of 21,000*l.* shall after *Lady-day 1719*, during thirty-two years, be a security for paying principal and interest of the said 360,000*l.*

Sect. 6. The treasury are to direct the officers of the *Exchequer* to receive by way of loan such sums as the commissioners shall think necessary for the buildings, repairs, and other purposes, by the acts of *Ann. cap. 22.* and *10 Ann. cap. 11.* intended, and to allow interest at 4*l. per cent.* and the monies so lent shall be tax-free; and the lenders shall have tallies of loans, and orders for payment; the principal to be paid in course, and the interest every three months; and no fee shall be taken for payment; and the said fund of 21,000*l. per annum* shall be liable to satisfy such orders without being diverted to any other use, on pain of *treble costs* to the party grieved; and such orders shall be assignable according to the course of the *Exchequer*.

Sect. 7. The monies arising on credit of the said 21,000*l. per annum*, and all the monies of the said fund shall be applied towards building of churches, &c. repairing *Westminster Abbey*, finishing *Greenwich Hospital*, making provision for ministers, &c.

Sect. 8. The principal of the loans, together with the monies supplied out of the funds, shall not exceed 360,000*l.*

Sect. 9. The treasury are to issue out the monies arising by loan, and out of the monies of such fund, such sums as the commissioners shall think necessary; which shall be paid to such person as his Majesty shall appoint to be the treasurer, who is to disburse the same according to such orders as he shall receive from the commissioners, and is to be accountable in the *Exchequer*, and shall give security, to be approved by the treasury.

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Sect.

Sect. 11. All the powers and clauses in the said acts of 9 *Ann. cap. 22.* and 10 *Ann. cap. 11.* and 1 *Geo. 1. cap. 23.* or in any other act for building the said churches, shall continue.

Sect. 12. The King may appoint commissioners to execute the powers in the said recited acts and in this act, touching the building and repairing of the said churches.

Stat. 12 Geo. 1. cap. 39. sect. 1. *Stat. 12 Geo. 1. cap. 39. sect. 1.* The sum of 2500*l.* part of the sum of 360,000*l.* by the act 5 *Geo. 1. cap. 9.* appointed to be raised, shall be allotted for the rector of the new church of St. *Mary le Strand*, and the treasurer shall dispose of the said 2500*l.* according to such orders as he shall receive from the commissioners, in purchasing lands, &c. to be conveyed to the rector of the said new church and his successors for ever; and in the mean time place out the same by order of the commissioners, on real securities or public funds.

Sect. 2. And for a farther provision for the rector of Saint *Mary le Strand*, the sum of *one hundred and twenty-five pounds per ann.* shall be raised by an equal pound-rate on the inhabitants (except the rector, and such as shall not pay to the poor) within the district appointed for the parish of St. *Mary le Strand*: and for that purpose the rector, churchwardens, and vestry, are yearly on *Easter Tuesday*, or within fourteen days after, on notice given in the church after divine service the *Sunday* before, to make an assessment on the inhabitants for raising by an equal pound-rate; such yearly sum for the maintenance of the rector; and if the vestry shall neglect to make such assessment, it shall be lawful for the churchwardens alone, at any time within fourteen days after such neglect to make such assessment.

Sect. 3. If the churchwardens shall neglect to make the assessment, they shall forfeit *one hundred pounds*, to be recovered by any person who will sue.

Sect.

Sect. 4. The assessment shall be allowed by two justices of *Middlesex*, and the sums shall be collected by persons nominated by the vestry or churchwardens; and the collector refusing to act shall forfeit to the crown *one hundred pounds*, to be recovered as above.

Sect. 5. If any person shall refuse to pay the sum assessed, it shall be lawful for the collector, by warrant of two justices, to levy the same by distress and sale of goods.

Sect. 6. If any person shall find himself aggrieved by any assessment, on complaint made and notice in writing, within *six days* after demand of the monies assessed, given to the collectors, the justices of peace of *Middlesex*, at their next quarter-sessions, are to hear and determine the same.

Sect. 7. Where any houses, &c. shall be unoccupied, and where any inhabitants shall remove during the continuance of the assessment, the monies assessed not exceeding one quarterly payment shall be levied on the next tenant.

Sect. 8. The churchwardens, within *fourteen days* after every assessment, and the appeal determined, shall make two transcripts thereof in parchment, and subscribe the same, and within *two days* shall deliver one of them to the rector, and the other shall be set up for *three weeks* in the most public place in the church, and afterwards remain in the vestry.

Sect. 9. The produce of the said yearly sum of *one hundred and twenty-five pounds* shall be the annual maintenance of the rector, over and above such surplice-fees as belong to the rector (*Easter offerings excepted*) and the house for the habitation of the rector, and over and above all gifts and benefits, not exceeding in the whole the yearly value of *two hundred pounds*.

Sect. 10. The rectory of St. *Mary le Strand* shall not be held in commendam.

Sect. 11. If the commissioners shall purchase a house for the habitation of the rector without the bounds of the parish (but near thereunto) the house shall, after the enrolment in *Chancery* of the bargain and sale, whereby the same shall be conveyed, be deemed part of the parish of St. *Mary le Strand*.

Sect. 12. The parish-clerk of St. *Mary le Strand* shall be a member of the corporation of parish-clerks.

Sect. 13. If any suit be commenced for any thing done in pursuance of this act, the defendant may plead the general issue, &c. and on verdict, &c. shall recover treble costs.

Sect. 14. This act shall be a public act.

Stat. 13 Geo. I. cap. 35. sect. 1. The parishioners of the parish of St. *Catherine Cree-church*, otherwise *Christ-Church, London*, shall pay to the master and fellows of *Magdalén College, Cambridge*, during their estate in fee in the impropriate rectory and tythes of the said parish, *one hundred and fifty pounds per ann.* clear of deductions, at the four usual feast days, in lieu of all tythes, oblations, offerings, fruits, profits, and advantages, from the owners or occupiers of any houses, &c. within the said parish, and for the impropriator's providing the parish with a curate.

Sect. 3. If default shall be made in payment of the said yearly sum of *one hundred and fifty pounds thirty days* after any of the said feasts; oath of such default being made before any of the barons of the *Exchequer*, or before the Lord Mayor of *London*, or any justice of peace for that city, it shall be lawful for the said baron, &c. to summon such persons as shall have been appointed to collect the said monies, and such other persons as they shall think necessary, and to inquire of such default; and if such collector hath received any monies, and neglected to pay the same, it shall be lawful for the said baron, &c. to issue warrants to distrain the goods of such collectors, towards satisfaction of such money, and to sell such goods; and for want of goods, to issue their warrant for imprisoning such deficient collectors,

lectors, till payment be made: and if such collector shall not satisfy the monies for which he shall stand committed, within ten days, or if the duties shall not be paid to the collector, it shall be lawful for the said master and fellows, &c. to distrain for the arrears, upon any the goods of the parishioners; and the goods so distrained to keep four days, to be appraised by two persons, and sold for payment of the money. PROVIDED, That no distress be made on the goods of any person for more than *five pounds*. PROVIDED, That such payment arising by distress shall in no wise discharge the imprisonment of any collector till payment be made to a vestry; which being paid, shall be applied in ease of the next rate: and if the goods of any inhabitant be distrained, the collector shall satisfy the money, together with his charges, out of the first money that shall come to his hands.

Sect. 4. The churchwardens and vestry are required yearly on the *twenty-fifth of March* (notice being given in the church the *Sunday before*) to make an assessment by a pound-rate, upon all occupiers of houses or tenements in the parish, for raising the said yearly sum of *one hundred and fifty pounds* in lieu of tythes, &c. which rates shall be subscribed by the alderman of the ward, or any two justices of peace for the city; and the sums shall be collected quarterly, by such persons as shall by the vestry be yearly appointed.

Sect. 5. If any person shall find himself aggrieved by any rate, on complaint to the alderman of the ward, or to any two justices of the peace for the city, within ten days after notice of such rate given to the party assailed, the said alderman or justices, summoning the party and the churchwardens, shall have power within *five days* to hear and determine the matter.

Sect. 6. If any person shall refuse the office of collector, (not being privileged from serving parish offices) it shall be lawful for the vestry to impose a fine on such person, not exceeding *ten pounds*, which shall be levied by distress and sale of goods, by warrant of the lord mayor and two justices of peace, to be applied to the use of the poor; and it shall be lawful for any vestry to

appoint other collectors instead of those refusing, dying, failing, or removing.

Sect. 7. Collectors shall not be obliged to serve that office more than *one year*, and shall be exempted from the office of overseer or collector for the poor.

Sect. 8. Every collector shall quarterly or oftener account for, and pay to the receiver appointed by the vestry, all money collected over and above the said *one hundred and fifty pounds*; and in case of neglect, the like remedy shall be had, as is provided for the recovery of the sum; and such overplus monies shall be disposed of as the common stock of the parish.

Sect. 9. If any person shall neglect to pay the money assessed, *four days* after demand, or personal notice given, or left in writing at the place of abode of such person, then (the time of appeal being lapsed, or the appeal determined) it shall be lawful for the collector in the day-time to enter into any house of such person (taking to his assistance the constable or other peace officer) to distrain the goods of such person, and to sell the same for satisfaction of such rate.

Sect. 10. If any loss or deficiency shall happen in the said rates, the same shall be made good by re-assessment to be added to the next rate; and if the churchwardens and vestry shall neglect to make such rates, and to appoint collectors *twenty days*, it shall be lawful for such churchwardens alone, within *ten days* after such neglect, to make such rates, and to appoint collectors; and if such churchwardens shall neglect, &c, they shall be committed to prison till such rates, &c. be made, and collectors appointed.

Sect. 11. The inhabitants shall repair the chancel of the said parish church, and receive all profits from burials in the church, and all other profits which shall arise by the chancel; the customary dues payable to the curate excepted.

Sect. 12. The yearly sum of *seventy pounds* shall be paid by the master and fellows of *Magdalen College* in *Cambridge*,

Cambridge, out of the sums to be paid to them by this act, to the officiating curate, clear of all deductions, by four equal payments on the feast-days before-mentioned; and it shall be lawful for the persons appointed to collect the rates, out of the monies collected, to pay the said *seventy pounds per annum* to such curate; and the curate shall take to his own use the surplice-fees.

Sect. 13. If any action shall be commenced against any person for what he shall do in pursuance of this act, he may plead the general issue, and on a verdict, &c. shall recover treble costs.

Sect. 14. This act shall be a public act.

Stat. 1 Geo. 2. cap. 15. sect. 12. For raising a maintenance for the rector of the new church in the *Hamlet of Spitalfields*, within the parish of *St. Dunstan, Stepney*, the sum of *3000 l.* part of the monies intended by the *act 1 Geo. 1. cap. 23.* to be raised for provision for ministers of the fifty new churches, shall be allotted for the share which the rector of the new church shall have.

Sect. 2. In lieu of a certain sum of money, to be by the commissioners appointed to be paid to the rector for every burial, and towards raising the yearly sum of *one hundred and twenty-five pounds*, agreed to be raised within the district, and paid towards the maintenance of the rector, there shall be paid to the churchwardens of the new parish the sums following, *viz.* for every burial in the church-yards, such sums as the vestry shall, with the consent of the ordinary, settle, not exceeding *thirty shillings*, nor less than *two shillings*, (fees on the burial of any person who received alms, to be paid by the overseers of the poor;) and for the liberty of making vaults, or setting up any monument, such sums as the vestry shall appoint; and from the consecration of the church, and the induction of a rector, it shall be lawful to deposit any corpse in the vaults under the church or steeple; so as the floor of such vaults be not broke; and such money as shall be appointed by the vestry for depositing the corpse shall be paid to the churchwardens towards the maintenance of the rector.

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Sect. 3. It shall be lawful for the churchwardens to make vaults, and set up monuments, and deposit corpse, without any hindrance by the rector.

Sect. 4. Towards the further maintenance of the rector, the churchwardens shall yearly pay, to him *one hundred and twenty-five pounds*, without deduction for taxes, at the four usual feasts, out of the monies received in pursuance of this act; and if such monies shall be deficient, then out of any public monies belonging to the parish, not arising by any poor-rate or pound-rate, as the vestry shall direct, which other money shall be made good out of the next surplus of the burial monies.

Sect. 5. If default be made in payment of the yearly sum of *one hundred and twenty-five pounds* to the rector *twenty-one days* after any of the days of payment, the rector may recover the same against the churchwardens by action of debt, &c.

Sect. 6. It shall be lawful for the rector, instead of proceeding by action, to make his complaint of such default to any one justice of peace for *Middlesex*; and on such complaint, and oath made of the same in arrear, the justice by warrant may summon the persons making default, at such time as he shall appoint, not exceeding *four days* from the date of the warrant; and if sufficient cause shall not be shewn (oath being made of due notice of such summons, in case the party concerned shall not attend) the justice may by warrant cause all such monies in arrear to be levied by distress and sale of goods, the costs to be ascertained on oath before the justice; and if sufficient distress cannot be had, the justices are to commit the offenders to the common gaol till they have paid all arrears.

Sect. 7. All succeeding churchwardens shall be liable to make good, out of any parish monies in their hands, all arrears of the said yearly sum of *one hundred and twenty-five pounds*, as aforesaid, so as such arrear do not exceed *one year's payment*, and so as such action be commenced, or complaint made against the succeeding church-

churchwardens, within three months after their being sworn into the office.

Sect. 9. The rector, churchwardens, and overseers for the poor of the new parish, and all persons who have served or paid fines for the office of churchwarden and overseers of the poor for the hamlet of *Spitalfields*, or the new parish, so long as they shall continue householders within the parish and pay to the poor's rate, shall be the vestrymen of the new parish, and shall meet from time to time, on notice to be published in the church by order of the rector, churchwardens, or overseers, on the Lord's day next preceding, after divine service; and the said vestrymen shall elect a lecturer, as also churchwardens, sidesmen, parish-clerk, and all other officers, who were usually chosen for the hamlet; and also elect and put out the sexton, grave-diggers, and all other officers and servants to be employed about opening the pews, or otherwise in the church; and the lecturers shall be admitted by the rector to the use of the pulpit.

Sect. 10. The district set out for a new parish shall be a distinct parish; the name of which shall be given to the church in the act of consecration; and the inhabitants shall be discharged as well against the rector of the new church as against the rector of the parish of *Stepney*, from all *small tythes*, *Easter offerings*, *garden-pennies*, and all other duties arising within the new parish.

Sect. 11. All great tythes, or *modus* or composition in lieu thereof, within the new parish, shall continue to be paid to the principal and scholars of *King's Hall* and college of *Brazen Nose*, in *Oxford*, or the persons to whom they belong.

Sect. 14. The provisions hereby made for the rector shall be the annual maintenance of the rector, over and above surplice-fees, and the house for his habitation, and over and above all gifts and bequests to the rector; provided, that no surplice-fees upon any burial shall be taken by the rector, unless where he shall be desired to perform the burial office, or part thereof, in the

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the church, and the corpse be carried into the church, and then only such surplice-fees as shall be settled by the vestry, with the consent of the ordinary, who are also to settle all other fees payable to each other officer belonging to the church.

Sect. 18. The payments for repairing the highways within the parish of Stepney shall be the same as they were before this act.

Stat. 3 Geo. 2. cap. 30. Sect. 1. Towards raising a maintenance for the rector of the new church in the hamlet of Wapping, Stepney, in the parish of St. Dunstan, Stepney, in Middlesex, the sum of *three thousand pounds* shall be allotted as the share which the rector shall have out of the monies intended by the act 1 G. I. cap. 23.

Sect. 2. For the better maintenance of the rector, there shall be paid to the churchwardens, for every burial in the church-yards, such sums as the vestrymen, with consent of the bishop, shall settle, not exceeding *thirty shillings*, or less than *two shillings*, (fees for burials of the poor to be paid by the overseers;) and for liberty of making vaults or monuments in the church-yard or church, such sums as the vestrymen shall appoint; and corpse may be deposited in any vaults belonging to the church or steeple, so as the floor be not broken up; and the money for depositing the corpse shall be paid to the churchwardens towards the maintenance of the rector.

Sect. 4. Towards the better maintenance of the rector, the churchwardens shall pay him the yearly sum of *one hundred pounds, tax-free*, at the four usual feasts, out of the monies received in pursuance of this act.

Sect. 9. The rector, churchwardens, and overseers of the poor, and all persons who shall pay *two shillings per month* to the poor, and no others, shall be vestrymen of the new parish, and shall meet, &c.

Stat. 3 Geo. 2. cap. 3. Sect. 1. Towards raising a maintenance for the rector of the new church of St. Mary

Mary of Stratford Bow, in the county of *Middlesex*, the sum of *three thousand five hundred pounds*, part of the monies intended by the act 1 Geo. 1. cap. 23. shall be allotted as the share which the rector of the said new church shall have out of the same monies; and if no purchase can be obtained in *three years*, the rector shall not be intitled to any other interest than *3 l. per cent.* till such purchase can be obtained.

Sect. 2. For the better maintenance of the rector, the churchwardens are impowered to raise monies; on the pews in the church and chancel, by letting them to inhabitants, not to exceed *forty-six pounds per annum*, and also the sums following, *viz.* for every burial, in the church-yard, such sums as the vestry, with the allowance of the ordinary, shall appoint, not exceeding *forty shillings*, nor less than *three shillings* for every burial, (such fees for the burial of any person who received alms from the parish to be paid by the overseers;) and for liberty to make any vault, or set up any monument in the church or cemetery, such sums as the vestry shall appoint; and it shall and may be lawful to deposit corpse in any vault, under the church or steeple, so as the floor of such vault be not broken; and the money for depositing the corpse shall be paid to the churchwardens for the better maintenance of the rector.

Sect. 4. The churchwardens shall yearly pay, out of any parish-monies in their hands, to the rector, the sum of *forty pounds*, without deduction for taxes, at the four usual feasts.

Sect. 7. The rectors of the new parish of *Saint Mary of Stratford Bow* shall be intitled to all surplice-fees and perquisites, over and above the house for habitation; and all gifts and profits, *small tythes, Easter offerings, and garden-pennies*, excepted.

Sect. 9. The new parish shall be deemed a distinct parish, by the name of *St. Mary of Stratford Bow*; and be divided from the parish of *St. Dunstan Stepney*, and shall be discharged from all *small tythes, Easter offerings, garden-pennies*, and all other duties.

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Stat. 3 Geo. 2. cap. 17. sect. 1. Towards raising a maintenance for the rector of the new church in the hamlet of *Limehouse*, in the parish of *St. Dunstan in Stepney, Middlesex*, and part of the hamlet of *Ratcliff*, the sum of 350*l.* part of the money intended by the act 1 Geo. 1. cap. 23. shall be allotted for the share which the rector shall have.

Se^t 5. Towards making further provision for maintenance of the rector, the churchwardens shall pay to such rector, out of any parish monies, the yearly sum of *sixty pounds*, without deduction for taxes, at the four usual feasts.

Se^t 10. The rector, churchwardens, and overseers, and all other persons who shall pay *twelve shillings* each book to the poor of the new parish, and none others, shall be vestrymen, and shall meet and elect a lecturer.

The following part of this act is to the same effect of the act for *Spitalfields* church, which see before, in Stat. 2 Geo. 2. c. 10. se^t 10. except the following section.

Se^t 10. The inhabitants of that part of the hamlet of *Ratcliff*, which is intended to be part of the new parish, who shall pay *two shillings and six-pence* per month to the poor's rates of *Ratcliff*, shall be vestrymen of the new parish; but they shall not intermeddle in any affairs which concern the hamlet of *Limehouse*, in those respects wherein that hamlet and the said part of the hamlet of *Ratcliff* are to continue distinct.

Stat. 3 Geo. 2. cap. 19. sect. 1. Towards raising a maintenance for the rector of the new church near *Bloomsbury-market*, in the parish of *St. Giles in the Fields*, in *Middlesex*, the sum of *three thousand pounds*, part of the monies intended by the act 1 Geo. 1. cap. 23. shall be allotted for the share which the rector shall have.

Se^t 2. The inhabitants of *St. Giles in the Fields* shall pay to the treasurer of the commissioners *one thousand two hundred and fifty pounds*, and the said treasurer is to lay

lay out the same as he is to lay out the before-mentioned *three thousand pounds*, and shall pay the produce of the said *one thousand two hundred and fifty pounds* to the rector of the new church, for his better maintenance; and if no purchase can be had within five years, the rector shall not be intitled to any other interest than *three pounds per cent.*

Sect. 3. The annual profits of the lands, &c. to be purchased with the said sums of *three thousand pounds*; and *one thousand two hundred and fifty pounds* shall be the annual maintenance of the rector of the new church, over and above surplice-fees, *Easter* offerings, and other dues, and the house for his habitation, and over and above all gifts, not exceeding the yearly value of *two hundred pounds*.

Sect. 5. The commissioners, with the consent of the vestry of the new parish, shall ascertain what sums shall be paid to the rector, and each officer, for every burial; which sums shall be registered in *Doctors Commons.*

Sect. 6. The vaults and rooms under the church, excepting those belonging to the rector's dwelling-house, and also the vestry-room, together with the seats in the church, shall be vested in the churchwardens, for the public uses of the new parish, under the directions of the vestry; but the vaults shall not be disposed of, or applied to any use, without the consent of the rector.

Sect. 10. The lecturer, or afternoon preacher, for the new parish, shall be elected by the rector and vestry-men, in the vestry-room; and if there shall be an equality of voices, the person presiding shall have a casting vote; and the lecturer shall be permitted by the rector to have the use of the pulpit.

Sect. 11. There shall not be hung up in the steeple of the new church more than one bell.

Sect. 13. The churchwardens, overseers of the poor, and other parish officers for the new parish, shall be annually

annually chosen, as such respective officers are for the parish or *St. Giles in the Fields*; and all rates for the poor of both parishes shall be made jointly; and the workhouse shall be for the joint use of both parishes.

Sect. 14. All rights are saved to the most noble *Wriothesley Duke of Bedford.*

Sect. 15. If any action be commenced for any thing done in pursuance of this act, it shall be brought within three months after the fact, and shall be laid in *Middlesex*; and the defendant may plead the general issue, &c. and on a verdict, &c. recover treble costs.

Sect. 17. This act shall be a public act.

*Stat. 3 Geo. 2.
cap. 33. sect. 1.*

Stat. 3 Geo. 2. c. 33. sect. 1. The sum of 3500*l.* part of the monies intended by the act 1*Geo. 1. cap. 23.* shall be allotted for the share which the minister of the new church in the parish of *St. Nicholas, Deptford*, in the counties of *Kent and Surry*, shall have.

Sect. 4. For further provision for the maintenance of the rector, the churchwardens shall pay him the yearly sum of *seventy pounds*, out of any parish-monies in their hands, at the four usual feast-days, without abatement for taxes, &c. and if the monies fall short, then out of any public monies in their hands, not arising by any poor's or pound-rate, as the vestry shall direct; to be replaced out of the next surplus arising by burials.

Sect. 5. In default of payment of the said yearly sum of *seventy pounds*, *twenty-eight days* after the same ought to be paid, the rector may sue for the same against the churchwardens, &c.

Sect. 8. The minister, churchwardens, overseers for the poor, and all other parishioners who shall pay to the poor, shall be the vestrymen of the new parish, and shall meet on notice in the church, by order of the rector, churchwardens, and overseers, or either of them, on the preceding Lord's day, after divine service; and shall elect churchwardens, sidesmen, parish-clerk; and

and all other officers for the said parish; and also may elect and amove the clerk, sexton, grave-digger, and all other officers and servants employed in opening pews or otherwise about the church; and may also nominate a lecturer, who shall be admitted by the rector to have the use of the pulpit.

Sect. 9. The district set out for a new parish shall be a distinct parish, divided from the parish of St. Nicholas, Deptford, and shall be discharged from payment of *Easter offerings, garden-pennies, and all other dues.*

Sect. 10. If any person shall be aggrieved by any rate, he may appeal to the quarter-sessions of Kent or Surrey, as the premises assed shall lie.

Sect. 11. All tythes arising within the new parish, which usually were the property of the vicar of the old parish, shall be continued to him and his successors.

Sect. 12. The minister and his successors, and other persons having occasion to go to the house built for the minister, shall have liberty to pass through the church-yard, by such road as the vestry shall appoint; which road shall not be less than twenty feet wide, from *Butt-lane* to the minister's house.

Sect. 13. The provisions hereby made for the minister, &c. shall be the annual maintenance of the rector of the said church, over and above surplice-fees, and the house for his habitation; and over and above all gifts to him; but no surplice-fees upon burials shall be demanded, unless where he shall be requested to perform the burial office, or part thereof, in the church, and the corpse be carried into the church, then only such fees as shall be settled by the vestry, with the allowance of the ordinary; who are to settle all fees payable to each officer belonging to the church.

Sect. 15. When the vicarage of the old parish church shall become vacant, the first rector of the new church shall be nominated by his Majesty; and all succeeding rectors of the new church shall be presented by the patron of the old church.

Sect. 16. The rectory of the new parish shall not be held in commendam.

Sect. 17. The churchwardens shall provide three palls for burying the dead in the church-yard or vaults under the church, and shall take for the use of them not exceeding *ten shillings*; and no person shall bring any pall into the church-yard without paying to the churchwardens, not exceeding *ten shillings*, which shall be applied as the vestry shall appoint.

Sect. 19. All donations that have been given to the parish of *St. Nicholas, Deptford*, shall be equally divided, for the benefit of the old parish and the new.

Sect. 21. All rates for the poor of both parishes shall be raised by two moieties, *viz.* one out of the old parish, and the other out of the new; and the workhouse and house of correction is to be for the joint use of both parishes.

Sect. 22. The two parishes shall be jointly subject for repairing the roads in the upper part of the parish of *Deptford*, which is a district for the new parish.

Sect. 23. If any action be commenced for any thing done in pursuance of this act, the defendant may plead the general issue.

Sect. 24. This act shall be a public act.

Sect. 26. All glebe-land that did belong to the parish of *St. Nicholas, Deptford*, shall be vested in the churchwardens of the new parish, to be applied towards raising the *seventy pounds per annum*, to be paid by the churchwardens to the rector of the new parish.

Stat. 4 Geo. 2. cap. 20. sect. 1. *Stat. 4 Geo. 2. cap. 20. sect. 1.* The church of *Gravesend* shall be rebuilt as one of the fifty new churches directed to be built by the acts 9 *Ann. c. 22.* and 10 *Ann. c. 11.* and it shall be lawful for the commissioners to pay *five thousand pounds*, to be disposed of according to the direction of the mayor of *Gravesend* and others, trustees for rebuilding the said parish-church.

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Stat. 5 Geo. 2. cap. 4. sect. 1. The church of Woolwich shall be rebuilt as one of the fifty new churches; and it shall be lawful for the commissioners to pay 8000*l.* according to the direction of the right honourable the lord Vere Beauclerk and others, trustees for rebuilding the said church.

Stat. 5 Geo. 2;
cap. 4. sect. 1.

Stat. 6 Geo. 2. cap. 8. sect. 1. The church of St. George the Martyr in Southwark shall be rebuilt as one of the fifty new churches; and the commissioners are required to pay six thousand pounds to the order of the right honourable the earl of Ardsford and others, trustees for rebuilding the said church.

Stat. 6 Geo. 2;
cap. 8. sect. 1.

Stat. 6 Geo. 2. cap. 11. sect. 1. The sum of 3500*l.* part of the monies intended by act 1 Geo. 1. cap. 23. to be applied for the making provision for the ministers of the fifty new churches, shall be allotted for the share which the rector of the new parish church near Horsleydown (taken out of St. Olave's parish) shall have; and the treasurer of the commissioners is to lay out the said sum in purchasing lands.

Stat. 6 Geo. 2;
cap. 11. sect. 1.

Sect. 2. Out of the money appropriated for building the said fifty new churches, there shall be issued such sums, not exceeding one thousand one hundred pounds, as shall be necessary for building a dwelling-house for the minister; and for paving the church-yard, and setting up gates and rails, &c.

Sect. 5. It shall be lawful for the churchwardens of the said old and new parishes respectively, to make vaults, and set up monuments and grave-stones in the church-yards; and for the churchwardens of the new parish to set up such monuments in the new church, and deposit corpse in the same, without hindrance of the minister.

Sect. 7. The churchwardens of the new parish shall pay, out of any parish-monies in their hands unto the minister, the yearly sum of sixty pounds, without deduction of taxes, at the four usual feasts.

Sect. 11. The minister, and all other parishioners occupying tenements of the yearly value of ten pounds, as

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the same shall be rated to the land-tax, shall be vestrymen, and shall meet from time to time, upon public notice read in the church, by order of the minister, churchwardens, and overseers, or either of them, on the Lord's day next preceding, after divine service; and the said vestrymen shall elect churchwardens and other officers, and elect and put out the sexton, grave-diggers, and all other officers and servants to be employed in opening the pews, or otherwise about the church, and exercise the same powers as they might have done in case they had been named vestrymen by the commissioners; and may elect a lecturer if they think fit.

Sec. 12. The district set out for a new parish shall be a distinct parish from the parish of St. Olave's, Southwark, and shall be discharged as well against the minister of the new church, as against the rector of St. Olave's, from *Easter* offerings; and also to be exempted from all other dues payable to the rector of St. Olave's.

Sec. 13. The provisions hereby made for the minister of the new church shall be in lieu of all *moduses*, *Easter* offerings, and other demands; excepting such surplice-fees, and other perquisites as he shall be allowed by this act to receive; and such other fees and perquisites as the vestry, with the allowance of the ordinary, shall appoint.

Sec. 15. The rectory of the new intended parish shall not be taken or held in *commendam*.

Sec. 16. The churchwardens shall provide three palls for burying the dead, and shall for the use of the same demand any sum not exceeding *ten shillings*, nor less than *two shillings*; and no person shall bring any pall into the church-yard, unless such person shall pay to the churchwardens such sum as they shall demand, not exceeding *ten shillings*; which sums so taken shall be applied as the vestry shall appoint; provided that the palls belonging to St. Olave's may be used at any funeral in the burying places that are to be used in common between the old and new parishes, without paying

paying any fee to the churchwardens of the new parish.

Sect. 18. All the burying grounds within the old and new parishes shall be held in common between both parishes, and the surplice-fees for burials of persons, dying within the old parish, where the service shall be performed by the minister of the old parish, or any other officiating for him, shall be paid to the rector of the old parish; and surplice-fees for persons dying within the new parish, where the service shall be performed by the minister of the new parish, shall be paid to the rector of the new parish; and all other fees shall be paid to the churchwardens of such of the districts where the person buried did reside; provided, that if any stranger shall be buried in either of the said parishes, the fees for palls, and the burial fees, shall be equally divided between the two parishes.

Sect. 19. The inhabitants of the new parish shall be intitled, in common with the inhabitants of the old parish, to all benefits arising from the free school.

Sect. 20. All donations that have been given to the parish of St. Olave's, Southwark, shall be divided in manner following, *viz.* *three fifths* for the old parish, and out of the other *two fifths* there shall be paid to the churchwardens of the old parish the yearly sum of *twenty-nine pounds*, free from taxes, for the benefit of the poor, and the residue of said the *two fifths* shall be for the benefit of the new parish.

Sect. 21. The rector, and senior churchwarden, of each of the parishes shall jointly collect the several charities and donations; and shall, with the consent of the vestry of each parish, make leases of the lands and tenements given for the charitable purposes in such gifts and donations mentioned, as the churchwardens of St. Olave's, Southwark, might have done.

Sect. 22. The several churchwardens shall give half yearly accounts of the charities to any two justices of the peace for Surry, not being inhabitants of either of the parishes, within *ten days* after the feast of the Annunciation

nunciation and St. Michael; and in case they shall not appear upon summons, the justices may issue a warrant for bringing the party offending before such justice; and in case the party shall refuse to account, such justice may commit the person so refusing to the county gaol till he shall have accounted; and in case the party accounting shall neglect to pay the money in his hands as the justices shall direct, it shall be lawful for such justices to issue warrants for levying the same on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within ~~five~~ days; and where goods of such offender cannot be found, to commit such offender to the county gaol, till such money be paid, or until the major part of the vestry shall desire that the offender be discharged; but the party shall be at liberty to appeal to the next quarter-sessions.

Sect. 23. The workhouse and furniture, and the ground adjoining, shall be divided, viz. *three fifth* parts shall be the property of the old parish, and the other *two fifths* the property of the new parish, subject to the yearly rent of *a pepper-corn*, payable to the trustees of the free-school of St. Olave's, Southwark; and all persons who shall obtain any settlement in that part of the workhouse which shall be allotted to the old parish, shall be maintained by the old parish.

Sect. 26. If any action shall be commenced for any thing done in pursuance of this act, the defendant may plead the general issue.

Sect. 27. This act shall be a public act.

Stat. 6 Geo. 2.
cap. 21, sect. 1.

Sect. 6 Geo. 2. c. 21, sect. 1. The sum of 3500*l.* part of the monies applied for making provision for the ministers of the fifty new churches, shall be allotted for the rector of the new church in Old-Brett.

Sect. 2. Towards raising the yearly sum of 120*l.* agreed to be raised within the Lordship part of the parish of Cripplegate, for the maintenance of such rector, there shall be paid to the churchwardens of the new parish, upon the burial of any person in the church-

yards

yards of the new parish, such sum of money as the vestrymen shall, with the allowance of the ordinary, appoint; and for the liberty of making a vault, or setting up any monument, or grave-stone, such money as the vestrymen shall appoint; and it shall be lawful to deposit any corpse in the vaults under the church or steeple, so as the floor of such vault be not broke.

Sect. 4. The churchwardens shall pay out of any parish monies in their hands, unto such rector, the yearly sum of one hundred and twenty pounds, without deduction for taxes, at the four usual feasts.

Sect. 9. The rector, churchwardens, and overseers, for the poor of the said new parish, and all other persons who have served, or paid fines for offices for the said district or new parish, so long as they continue householders within the parish, and pay to the poor's rate, shall be the vestrymen of the said parish; and the said vestrymen may elect a lecturer, as also churchwardens, sidesmen, and all other officers for the parish; and also elect, and put out, the sexton, grave-diggers, and other officers and servants.

Sect. 14. When the vicarage of the old parish church shall become vacant, the first rector of the new church shall be nominated by his Majesty, and all succeeding rectors of the said new church shall be collated by the dean of St. Paul's, London.

Sect. 16. All charities and donations that have been given to the parish of St. Giles, Cripplegate, shall be enjoyed by the vicar or churchwardens of the present parish of St. Giles, Cripplegate, and the church-wardens of the new intended parish, by such proportions as they were before.

Sect. 17. The burying-ground called *The Bear and Ragged-staff* burying-ground, shall be to the sole use of the old parish.

Sect. 19. The highways shall be repaired as by the laws now in being; and all money which shall be expended in repairing the same, shall be paid in the

proportions following, viz. *five eight parts* by the new intended parish, and the other *three eight parts* by the old parish, commonly called the Freedom part.

Sect. 20. The parish-clerk of the new parish shall be a member of the corporation of masters, wardens, assistants, and brethren of the parish-clerks.

Sect. 24. After the clerk's place of the old parish shall become vacant, the rector of the new parish shall pay to the vicar of the old parish of St. Giles, *Cripplegate*, the yearly sum of *ten pounds*, without deduction of taxes, at the four usual days of payment; and in case any of the payments shall be behind *twenty-one* days, the vicar may sue for the same against such rector by action of debt.

Stat. 6 Geo. 2. cap. 25. sect. 20. It shall be lawful for the commissioners of the treasury to pay out of the monies reserved for building fifty new churches, unto the subdean, treasurer, and steward of the collegiate church of St. Peter, *Westminster*, *four thousand pounds*, for the repair of the said Collegiate church, and also to pay to the said subdean, treasurer, and steward, the further sum of *one thousand two hundred pounds* for finishing the dormitory.

C H A P. IX.

*A table of monasteries, abbeys, &c. exempt from tythes,
being dissolved by stat. 31 Hen. 8.*

A T A B L E of monasteries of the yearly value of
200*l.* or upwards, dissolved by statute of 31 H. 8.
referred to in page 18 of this work.

*Note. The lands belonging to these religious houses were
discharged from tythes.*

Bedfordsbire.

| <i>Monasteries.</i> | <i>Order.</i> | <i>Founded.</i> | <i>Value.</i> |
|---------------------|---------------|-----------------|---------------|
| Newham, pr. | C. Aust. | T. Hen. 1. | 293 15 11 |
| Elmiston, ab. | Ben. | T. W. Conq, | 285 12 10 |
| Warden, ab. | Cist. | 1139. — | 389 16 6 |
| Chicksand, pr. | Wh. C. Gill, | T. W. Rufus. | 212 3 5 |
| Dunstable, ab. | C. Aust. | T. Hen. 1. | 344 13 3 |
| Wooburn, ab. | Cist. | T. John, | 391 18 2 |

Berkshires.

| | | | |
|----------------|----------|------------|-----------|
| Reading, | Ben. | T. Hen. 1. | 1938 14 3 |
| Buslesham, ab. | C. Aust. | 13 Ed. 3. | |
| Abington, ab. | Ben. | 720 | |

Buckinghamshire.

| | | | |
|----------------|----------|------------|----------|
| Ashrugg coll. | C. Aust. | T. Edw. 1. | 416 16 4 |
| Noteley, ab. | C. Aust. | 1112. — | 437 6 8 |
| Missenden, ab. | Ben. | 1293. — | 261 14 6 |

Cambridgeshire.

| <i>Monasteries.</i> | <i>Order.</i> | <i>Founded.</i> | <i>Value.</i> |
|---------------------|---------------|-----------------|---------------|
|---------------------|---------------|-----------------|---------------|

| | | | |
|---------------|----------|---------|------------|
| Thorney, ab. | Ben. | 972. — | 411 12 81 |
| Barnwell, pr. | C. Aust. | 1093. — | 3 26 11 10 |

3. H. 12 to statut yd beviolib abrawen to 1000.

Cheshire.

| | | | |
|-------------------|-------|---------|-----------|
| St. Worburge, ab. | Ben. | 1095. — | 1093 5 11 |
| Combermere, ab. | Cist. | 1134. — | 225 9 7 |

Gordwall.

| | | | |
|--------------------|----------|---------------|----------|
| Bodmin, pr. | C. Aust. | 936. — | 270 0 11 |
| Launceston, ab. | C. Aust. | T. W. Conq. | 354 0 11 |
| St. Germain's, ab. | C. Aust. | T. Ethelstan. | 243 8 0 |

| | | | |
|---------------------|----------|--------------|----------|
| Carlise, pr. | C. Aust. | T. W. Rufus. | 418 13 4 |
| Holme Colstrom, ab. | Cist. | T. 1135. — | 427 19 3 |

Cumberland.

| | | | |
|------------|----------|----------|----------|
| Darly, ab. | C. Aust. | T. H. 2. | 258 14 5 |
|------------|----------|----------|----------|

£ 41 8301 1. H. T. Ben.

Devonshire.

| | | | |
|-----------------|----------|------------|----------|
| Ford, ab. | Cist. | 1133. — | 374 10 6 |
| Newnham, ab. | Cist. | ab. 1246. | 227 7 8 |
| Dinkeswell, ab. | Cist. | 1201. — | 294 18 6 |
| Hertland, ab. | C. Aust. | T. H. 2. | 306 3 2 |
| Torre, ab. | Præm. | T. Ric. 1. | 396 0 11 |
| Beckfall, ab. | Cist. | T. H. 2. | 406 11 2 |
| Plympton, ab. | Cist. | T. Edw. 1. | 241 17 9 |
| Tavistock, ab. | Ben. | 961. — | 902 5 7 |
| Exon, pr. | Clun. | T. Hen. 1. | 502 12 9 |

4 M

Dorset.

Dorsetshire.

Monasteries.

Abbotbury,
Middleton, ab.
Tarrant, ab.
Shafton, ab.
Cerne, ab.
Sherburn, ab.

2 81 028
4 4 728
1 01 022

Order.

Ben.

Ben.

Cist.

Ben.

Hampshire.

| <i>Monasteries.</i> | <i>Order.</i> | <i>Founded.</i> | <i>Value.</i> |
|---------------------|---------------|-----------------|-----------------|
| | | | <i>l. s. d.</i> |
| St. Swithin's | Ben. | 634. — | 1507 17 6 2 M |
| Winton, ab. | Ben. | 634. — | 1507 17 6 2 M |
| Hyde, ab. | Ben. | by Alfred. | 865 18 0 |
| Wherwell, ab. | Ben. | by Edgar. | 339 8 7 |
| Ramsey, mon. | Ben. T. | 907. — | 393 10 10 |
| Twinham, pr. | C. Aust. | before 1042. | 312 7 0 |
| Bellaloco, ab. | Cist. | 1024. — | 326 13 2 |
| Southwick, pr. | C. Aust. | T. H. I. | 257 4 4 |
| Titchfield, ab. | Præm. | T. H. 3. | 249 16 1 |

Hertfordshire.

| | | | |
|------------------|------|--------|----------|
| St. Alban's, ab. | Ben. | 755. — | 2102 7 4 |
|------------------|------|--------|----------|

Huntingdonshire.

| | | |
|-----------------|---------------------|------------|
| St. Neot's, ab. | Ben. ab. T. Hen. 3. | 241 11 4 |
| Ramsey, ab. | Ben. 11969. — | 1716 12 47 |
| — | — | — |
| — | — | — |
| — | — | — |

Kent.

| | | | |
|---------------------|----------|------------|------------|
| St. Austin's, Cant. | Ben. | 605. — | 1413 4 11 |
| Ledis, pr. | C. Aust. | 1139. — | 362 7 7 |
| Feverham, ab. | Clun. | 1147. — | 286 12 6 |
| Boxley, ab. | Cist. | 1144. — | 204 4 11 |
| Roffen, ab. | Ben. T. | 600. — | 486 11 5 8 |
| Mallin, ab. | Ben. | by Edmund. | 218 4 2 1 |
| Dartford, ab. | C. Aust. | 1372. — | 380 0 0 0 |

Lancashire.

| | | | |
|--------------|-------|-------|---------|
| Whalley, ab. | Cist. | 1172. | 321 9 1 |
|--------------|-------|-------|---------|

Leicester.

Leicestershire.

| <i>Monasteries.</i> | <i>Order.</i> | <i>Founded.</i> | <i>Value.</i> |
|---------------------|---------------|-----------------|---------------|
| Leicester, ab. | C. Aust. | 1143. — | 951 14 5 |
| Croxdon, ab. | Præm. | ab. R. 1. | 388 0 10 |
| Launda, ab. | C. Aust. | T. W. Rufus. | 399 3 3 |

Lincolnshire.

| | | | |
|------------------------|----------|----------|------------|
| Lincoln, St. Cath. pr. | Gilb. | T. H. 2. | 202 5 6 |
| Kirksteed, ab. | Cist. | 1139. — | 286 2 7 |
| Revesby, ab. | Cist. | 1142. — | 287 2 4 |
| Thorton, ab. | C. Aust. | 1139. — | 594 17 10 |
| Barney, ab. | Ben. | 712. — | 366 6 1 |
| Croyland, ab. | Ben. | 716. — | 1803 15 39 |
| Spalding, ab. | Ben. | 1052. — | 761 8 11 |
| Sempringham, ab. | Gilb. | 1148. — | 317 4 1 |
| Epworth, mon. | Carth. | 1386. — | 237 15 3 |

London and Middlesex.

| | | | |
|------------------------------------|----------|-------------|-----------|
| St. John Jeru- salem, | — | 1000. — | 2385 12 8 |
| St. Barth. Smithfield, | C. Aust. | 1102. — | 653 15 0 |
| St. Mary Bishopsgate, | pr. | 1187. — | 478 6 6 |
| Clerkenwell, pr. | Ben. | T. Stephen, | 262 19 0 |
| London minors, | Ben. | T. Edw. 1. | 318 8 5 |
| Westminster, ab. | Ben. | T. Edgar. | 347 0 2 |
| Sion, ab. | C. Aust. | by Hen. 5. | 173 8 4 |
| London, a house of, | Carth. | T. Edw. 3. | 642 0 4 |
| St. Clare without Aldgate, mon. | — | 1292. — | 418 8 5 |
| St. Mary, Char- terhouse, mon. | Carth. | 1379. — | 736 2 7 |
| St. John, Holiwell, | Bl. M. | 1318. — | 347 1 4 |
| St. Mary East- Smithfield, ab. | Cist. | 1360. — | 602 11 10 |

Norfolk.

| Monasteries. | Order. | Founded. | Value. |
|------------------|----------|-----------------|----------|
| | | | l. s. d. |
| Thetford, ab. | Clun. | 1103.— | 312 14 4 |
| Wymondham, ab. | Ben. | 1139.— | 211 16 6 |
| Mulmo, ab. | — | by Canute. | 583 17 0 |
| Westerham, ab. | Præm. | T. Hen. 2. | 228 0 0 |
| Walsingham, ab. | C. Aust. | ab. T. Stephen. | 391 11 6 |
| Castle-acre, ab. | Clun. | 1090.— | 306 11 4 |
| West-acre, ab. | Clun. | T. W. Rufus. | 260 13 7 |

Northamptonshire.

| | | | |
|----------------------|-------|------------------------------|-----------|
| Burg. St. Peter, ab. | Ben. | 5 by Roserek 2 of Mercia. | 1721 14 9 |
| Pipewell, ab. | Cist. | 1143.— | 286 11 8 |
| St. Andrew's, pr. | Clun. | 1067.— | 263 7 3 |
| Sulby, ab. | Præm. | T. Stephen. | 258 8 3 |

Nottinghamshire.

| | | | |
|------------------|----------|---------------|----------|
| Lenton, pr. | Clun. | T. H. 1. | 329 5 10 |
| Thuragarton, pr. | C. Aust. | T. H. 1. | 259 9 4 |
| Welbeck, ab. | C. Aust. | T. Stephen. | 249 6 3 |
| Warsop, pr. | C. Aust. | — | 239 10 5 |
| Bella-Valla, pr. | Careh. | ab. 16 Ed. 3. | 227 8 0 |
| Newstead, pr. | C. Aust. | T. Ed. 3. | 319 18 8 |

The two last are undervalued in Dugdale, but thus by Speed.

Northumberland.

Tinmouth, a cell to St. Alban's, a nunnery. 511 4 8

Oxfordshire.

| | | | |
|-----------------|----------|--------------|-----------|
| Godstow, ab. | Ben. | T. Stephen. | 274 5 10 |
| Eynesham, ab. | Ben. | by Etheldred | 441 12 2 |
| Osney, ab. | Cist. | T. H. 1. | 654 10 2 |
| Thame, ab. | Cist. | T. H. 1. | 256 13 11 |
| Oxford, pr. | — | before Conq. | 224 4 8 |
| Dorchester, ab. | C. Aust. | 635.— | 219 12 0 |

Shropshire.

| Monasteries. | Order. | Founded. | Value. |
|-----------------|----------|-------------------------------|----------|
| Haghmond, ab. | C. Aust. | 1100.— | 259 13 7 |
| Lilleshulh, ab. | C. Aust. | { by Elfredak of Mercia. } | 229 3 1 |
| Wigmore, ab. | C. Aust. | 1172.— | 267 2 10 |
| Wenlock, pr. | Clun. | 1181 or before. | 408 0 7 |
| Salop, ab. | C. Aust. | 1081.— | 615 4 3 |
| Hales Owen, ab. | Præm. | T. John. | 337 15 6 |

Somersetshire.

| | | | |
|------------------|----------|--------------|----------|
| Glastonbury, ab. | Ben. | about 300. | 3311 7 4 |
| Brewton, ab. | C. Aust. | ab. T. Conq. | 439 6 8 |
| Henton, pr. | Carth. | T. Hen. 3. | 248 19 2 |
| Witham, pr. | Carth. | by Hen. 2. | 215 15 0 |
| Taunton, pr. | C. Aust. | T. Hen. 1. | 286 8 10 |
| Bath, pr. | Ben. | T. Hen. 3. | 617 2 3 |
| Keynesham, ab. | C. Aust. | T. Hen. 1. | 419 14 3 |
| Michelney, ab. | Ben. | 740.— | 447 4 11 |
| Backland, pr. | Cist. | T. Edw. 1. | 223 7 4 |

Staffordshire.

| | | | |
|--------------------|-------|------------|----------|
| Dela Cres, ab. | Cist. | 1153.— | 227 5 0 |
| Burton-upon-Trent, | Ben. | T. Eadred. | 267 14 3 |
| Croxden, ab. | Cist. | — | — |

Suffolk.

| | | | |
|----------------------|----------|-------------|------------|
| St. Edmundsbury, ab. | Ben. | 1020.— | 1659 13 11 |
| Butley, ab. | C. Aust. | 1171.— | 318 17 2 |
| Sibeton, ab. | Cist. | 1150.— | 250 15 7 |
| Ixworth, ab. | C. Aust. | T. W. Conq. | 286 9 5 |
| — | — | Cly | — |
| — | — | T. Jour. | — |
| — | — | Herts | — |
| — | — | Cly | Surrey |

Surrey.

| Monasteries. | Order. | Founded. | Value. |
|--------------------|----------|----------|-----------|
| Merton, pr. | C. Aust. | 1414.— | 957 19 5 |
| Shene, pr. | Carth. | 1414.— | 777 12 0 |
| Chertley, ab. | Ben. | 666.— | 659 15 8 |
| Newark, pr. | — | — | 258 11 11 |
| St. Maryovers, ab. | C. Aust. | 1106.— | 625 6 6 |
| Burmundsey, ab. | C. Aust. | 1106.— | 474 14 4 |

Sussex.

| | | | |
|----------------------|--------|--------------|----------|
| Lewis, ab. | Clun. | T. W. Rufus. | 920 4 6 |
| Robert's Bridge, ab. | Cist. | T. Hen. 2. | 248 10 6 |
| Bataille, ab. | Bl. M. | 1066.— | 987 0 11 |

Warwickshire.

| | | | |
|-----------------|----------|-------------|----------|
| Combe, ab. | Cist. | T. Stephen. | 311 15 1 |
| Kenelworth, ab. | C. Aust. | T. Hen. 1. | 538 19 0 |
| Meryval, ab. | Cist. | 1148.— | 254 1 3 |
| Nuneaton, mon. | Ben. | T. Hen. 2. | 253 14 5 |

Wiltshire.

| | | | |
|--------------------|----------|---------------|----------|
| Malmesbury, ab. | Ben. | ab. 670.— | 803 17 7 |
| Bradonstock, pr. | C. Aust. | T. W. Conq. | 212 19 3 |
| Edington, pr. | C. Aust. | 1352.— | 442 19 7 |
| Ambresbury, ab. | Ben. | 1177.— | 494 15 2 |
| Wilton, ab. | Ben. | T. Ethelwolf. | 601 1 1 |
| Fairly, a cell to? | Clun. | 1125.— | 217 0 4 |
| Lewis, | | | |
| Laycock, ab. | C. Aust. | 1232.— | 203 12 3 |

Worcestershire.

| | | | |
|-----------------|--------|----------|-----------|
| Malverne, ab. | Ben. | 1083.— | 308 1 9 |
| Evesham, ab. | Ben. | T. Offa. | 1183 12 3 |
| Pershire, ab. | Cist. | — — | 643 4 5 |
| Hales Owen, ab. | Fraem. | T. John. | 282 13 4 |
| Bordesley, ab. | Cist. | 1138.— | 388 1 1 |

York.

Yorkshire.

| Monasteries. | Order. | Founded. | Value. | | |
|---------------------------|----------|-------------|--------|----|----|
| | | | l. | s. | d. |
| St. Mary, York, ab. | Ben. | 1088.— | 1550 | 7 | 0 |
| Selby, ab. | Ben. | T. W. Conq. | 720 | 12 | 10 |
| Kirkstal, ab. | Cist. | 1147.— | 329 | 2 | 11 |
| De Rupe, ab. | Cist. | 1147.— | 224 | 2 | 5 |
| Monks Burton, ab. | Clun. | ab. 1186. | 239 | 3 | 6 |
| Nostel, ab. | C. Aust. | T. Hen. 1. | 492 | 18 | 2 |
| Pomfrat, ab. | Clun. | T. W. Conq. | 237 | 14 | 8 |
| Gisbourn, ab. | C. Aust. | T. Stephen. | 628 | 3 | 4 |
| Whitby, ab. | Ben. | T. W. Conq. | 437 | 2 | 9 |
| Montegratia, ab. | Carth. | ab. 1396. | 323 | 2 | 10 |
| Newburge, pr. | C. Aust. | 1145.— | 367 | 8 | 3 |
| Belland, ab. | Cist. | 1134.— | 238 | 9 | 4 |
| Kirkham, ab. | C. Aust. | T. Hen. 1. | 269 | 5 | 9 |
| Melsa, ab. | Cist. | 1136.— | 299 | 6 | 4 |
| Brilington, ab. | C. Aust. | T. Hen. 1. | 547 | 6 | 11 |
| Walton, ab. | Gilb. | T. Stephen. | 360 | 16 | 10 |
| Bolton in Craven, pr. | C. Aust. | T. Hen. 1. | 212 | 3 | 4 |
| Rival, ab. | Cist. | 1132.— | 278 | 10 | 2 |
| Jerval, ab. | Cist. | T. Stephen. | 234 | 18 | 5 |
| Furnes, ab. | Cist. | 1127.— | 805 | 16 | 5 |
| De Fontibus, | Cist. | 1132.— | 998 | 6 | 8 |
| Warter, pr. | C. Aust. | T. Hen. 1. | 221 | 3 | 10 |
| Richal. | — — | T. Stephen. | 257 | 7 | 0 |
| St. Michael near Hull, | Carth. | 1377.— | 231 | 17 | 3 |

In Wales.

| | | | | | | |
|-----------------------|---|----------|-------------|------|---|---|
| Valle de Sancta Cruce | ? | Cist. | T. Edw. 1. | 214 | 3 | 5 |
| in Denbighshire, | ? | | | | | |
| Strata Florida in | ? | Cist. or | T. W. Conq. | 1226 | 6 | 0 |
| Cardiganshire, | ? | Clun. | | | | |

N. B. Ab. *Abbey*; pr. *Priory*; C. Aust. *Canons of St. Austin*; Bl. M. *Black Monks*; Wh. C. *White Canons*; Ben. *Benedictines*; Gilb. *Gilbertines*; Præm. *Præmonstratenses*; Carth. *Carthusians*; Mon. *Monks*; Clun. *Cluniacs*; Cist. *Cistercians*; T. *in the time of*; ab. *about the year*.

Table des

| Nombre | Signification | Signification | Signification | Signification |
|--------|---------------|---------------|---------------|---------------|
| 1 | Y | Y | Y | Y |
| 2 | Y | Y | Y | Y |
| 3 | Y | Y | Y | Y |
| 4 | Y | Y | Y | Y |
| 5 | Y | Y | Y | Y |
| 6 | Y | Y | Y | Y |
| 7 | Y | Y | Y | Y |
| 8 | Y | Y | Y | Y |
| 9 | Y | Y | Y | Y |
| 10 | Y | Y | Y | Y |
| 11 | Y | Y | Y | Y |
| 12 | Y | Y | Y | Y |
| 13 | Y | Y | Y | Y |
| 14 | Y | Y | Y | Y |
| 15 | Y | Y | Y | Y |
| 16 | Y | Y | Y | Y |
| 17 | Y | Y | Y | Y |
| 18 | Y | Y | Y | Y |
| 19 | Y | Y | Y | Y |
| 20 | Y | Y | Y | Y |
| 21 | Y | Y | Y | Y |
| 22 | Y | Y | Y | Y |
| 23 | Y | Y | Y | Y |
| 24 | Y | Y | Y | Y |
| 25 | Y | Y | Y | Y |
| 26 | Y | Y | Y | Y |
| 27 | Y | Y | Y | Y |
| 28 | Y | Y | Y | Y |
| 29 | Y | Y | Y | Y |
| 30 | Y | Y | Y | Y |
| 31 | Y | Y | Y | Y |
| 32 | Y | Y | Y | Y |
| 33 | Y | Y | Y | Y |
| 34 | Y | Y | Y | Y |
| 35 | Y | Y | Y | Y |
| 36 | Y | Y | Y | Y |
| 37 | Y | Y | Y | Y |
| 38 | Y | Y | Y | Y |
| 39 | Y | Y | Y | Y |
| 40 | Y | Y | Y | Y |
| 41 | Y | Y | Y | Y |
| 42 | Y | Y | Y | Y |
| 43 | Y | Y | Y | Y |
| 44 | Y | Y | Y | Y |
| 45 | Y | Y | Y | Y |
| 46 | Y | Y | Y | Y |
| 47 | Y | Y | Y | Y |
| 48 | Y | Y | Y | Y |
| 49 | Y | Y | Y | Y |
| 50 | Y | Y | Y | Y |
| 51 | Y | Y | Y | Y |
| 52 | Y | Y | Y | Y |
| 53 | Y | Y | Y | Y |
| 54 | Y | Y | Y | Y |
| 55 | Y | Y | Y | Y |
| 56 | Y | Y | Y | Y |
| 57 | Y | Y | Y | Y |
| 58 | Y | Y | Y | Y |
| 59 | Y | Y | Y | Y |
| 60 | Y | Y | Y | Y |
| 61 | Y | Y | Y | Y |
| 62 | Y | Y | Y | Y |
| 63 | Y | Y | Y | Y |
| 64 | Y | Y | Y | Y |
| 65 | Y | Y | Y | Y |
| 66 | Y | Y | Y | Y |
| 67 | Y | Y | Y | Y |
| 68 | Y | Y | Y | Y |
| 69 | Y | Y | Y | Y |
| 70 | Y | Y | Y | Y |
| 71 | Y | Y | Y | Y |
| 72 | Y | Y | Y | Y |
| 73 | Y | Y | Y | Y |
| 74 | Y | Y | Y | Y |
| 75 | Y | Y | Y | Y |
| 76 | Y | Y | Y | Y |
| 77 | Y | Y | Y | Y |
| 78 | Y | Y | Y | Y |
| 79 | Y | Y | Y | Y |
| 80 | Y | Y | Y | Y |
| 81 | Y | Y | Y | Y |
| 82 | Y | Y | Y | Y |
| 83 | Y | Y | Y | Y |
| 84 | Y | Y | Y | Y |
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